

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

SABRINA RECHELLE CORLEY, )  
 )  
 Plaintiff, )  
 v. ) No. 3:12-CV-01250  
 )  
 WAL-MART, )  
 ) JURY TRIAL  
 Defendant. )  
 \_\_\_\_\_ ) VOLUME II OF IV

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BEFORE THE HONORABLE KEVIN H. SHARP  
TRANSCRIPT OF PROCEEDINGS  
NOVEMBER 5, 2014  
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1	INDEX TO EXAMINATIONS		
2	WITNESS		PAGE
3	DOROTHY JEAN PYE		
4	Direct Examination By Ms. Hagh		6
5	Cross-Examination By Mr. Rowlett		13
6	SABRINA RECHELLE CORLEY		
7	Direct Examination By Mr. McElhaney		15
8	Cross-Examination By Mr. Rowlett		55
9	Redirect Examination By Mr. McElhaney		78
10	MONTESHA LECHEL CORLEY		
11	Direct Examination By Ms. Hagh		83
12	Cross-Examination By Mr. Rowlett		96
13	WILLIAM GAVIGAN, M.D.		
14	Direct Examination By Mr. Rowlett		105
15	Cross-Examination By Mr. McElhaney		124
16	Redirect Examination By Mr. Rowlett		144
17			
18	DR. SCOTT DUBE (Videotaped deposition played)		6
19	DR. SCOTT DUBE (Videotaped deposition played)		14
20			
21	INDEX TO EXHIBITS		
22	P L A I N T I F F ' S E X H I B I T S		
23		IDENTIFIED	ADMITTED
24	7-9 Photographs from surveillance video	5	5
25			

1	INDEX TO EXHIBITS (Cont'd.)			
2	P L A I N T I F F ' S E X H I B I T S			
3			IDENTIFIED	ADMITTED
4	10	Drawing of knee	6	6
5	11	Operative Note dated 12/23/11	6	6
6	12	Operative Report dated 8/15/13	6	6
7	13	Drawing of knee	6	6
8	14	Summary of dates	6	6
9	15	Value Code Report	6	6
10	16	Photograph of knee	38	38
11	17	Photograph of legs	38	38
12	18	Photograph of knee	39	39
13	19	Medical report	14	14
14	20	Operative Report dated June 26, 2014	14	14
15	21	Plaintiff medical expenses since May 15, 2014	14	14
16				
17	22	Value Code Report	14	14
18	23	Medical records	14	14
19	25	X-ray Report	143	143
20				
21				
22				
23				
24				
25				

1           The above-styled cause came on to be heard on  
2 November 5, 2014, at 10:15 a.m., before the Honorable Kevin H.  
3 Sharp, when the following proceedings were had, to-wit:

4           COURTROOM DEPUTY: All rise, please.

5           THE COURT: Thanks. Y'all can be seated.

6           All right. Anything we need to talk about before you  
7 start again? Anything?

8           MR. MCELHANEY: Your Honor, we have a dispute we  
9 haven't been able to resolve about which life table to use  
10 when we ask you to take judicial notice of the life  
11 expectancy. Mr. Rowlett submitted one. We've submitted one.  
12 At some point we may need a ruling on that. His -- we've used  
13 the Tennessee Code Annotated table. Mr. Rowlett has got  
14 something off the internet, and it's eight years less life  
15 than the one we've proposed. I don't think -- just before we  
16 get to the close of plaintiff's proof we need to resolve it,  
17 and I just want to bring it to the Court's attention.

18           THE COURT: Okay. All right. Thanks. Anything  
19 else?

20           MR. ROWLETT: No, your Honor.

21           THE COURT: No? All right. Let's bring them back.  
22 You're starting with video?

23           MR. MCELHANEY: Dr. Dube, yes, your Honor.

24           (Whereupon, the jurors entered the courtroom.)

25           THE COURT: All right. Thanks. Y'all can be seated.

1           Okay. Here's how I know that the jury has really  
2 gotten into their job, is when you come in in order and you  
3 know how to sit down. A lot of times it takes juries a couple  
4 of days to figure out don't let the person who's going to sit  
5 first come in first. Then everybody has got to climb over  
6 them. So excellent job.

7           Everyone followed my instruction? You didn't talk  
8 about the case? Didn't research anything? Okay. All right.  
9 Ready to go.

10           MR. MCELHANEY: Yes, your Honor. Thank you. Your  
11 Honor, my agreement with Mr. Rowlett, a couple of -- one  
12 housekeeping matter from yesterday is to introduce Plaintiff's  
13 Exhibits 7, 8 and 9, which are still photographs taken from  
14 the surveillance video that we talked about yesterday during  
15 the testimony of --

16           THE COURT: Okay. They're just still shots from the  
17 video?

18           MR. MCELHANEY: Yes, your Honor.

19           THE COURT: Okay. All right. No objection to  
20 admitting this?

21           MR. ROWLETT: Right.

22           THE COURT: All right.

23           (Whereupon, Plaintiff's Exhibits 7 through 9 were  
24 marked for purposes of identification and admitted into  
25 evidence.)

1           MR. MCELHANEY: The next witness, your Honor, would  
2 be Dr. Scott Dube's deposition from April of 2014. As a part  
3 of that there are exhibits I'd like to move in, Plaintiff's  
4 Exhibits 10 through 15. They will be shown during the  
5 deposition.

6           THE COURT: Okay.

7           MR. ROWLETT: No objection.

8           THE COURT: All right. Admitted.

9           (Whereupon, Plaintiff's Exhibits 10 through 15 were  
10 marked for purposes of identification and admitted into  
11 evidence and a video played of Dr. Scott Dube's deposition.)

12          THE COURT: All right. Mr. McElhaney, you're ready  
13 to call your next witness?

14          MS. HAGH: Yes, your Honor. Dorothy Pye.

15          THE COURT: Ms. Pye, if you'll just come forward.  
16 When you get up here, raise your right hand to be sworn in.

17          COURTROOM DEPUTY: Raise your right hand, please.

18                   DOROTHY JEAN PYE,  
19          herein, having been first duly sworn, was examined  
20 and testified as follows:

21          COURTROOM DEPUTY: State your full name for the  
22 record, please, and spell your last.

23          THE WITNESS: Dorothy Jean Pye, P-y-e.

24                   DIRECT EXAMINATION

25 BY MS. HAGH:

1 Q Good morning, Ms. Pye.

2 A Good morning.

3 Q Ms. Pye, you are Ms. Corley's mother; is that correct?

4 A Yes.

5 Q And do you have any other children?

6 A No.

7 Q So Sabrina is your only child?

8 A Yes.

9 Q If you can, for the ladies of the jury describe your  
10 relationship with Sabrina.

11 A My relationship with Sabrina is very, very, very good.  
12 She's always been an excellent daughter, very caring.

13 Q And Sabrina has how many children?

14 A Three.

15 Q And are you actively involved in their lives?

16 A Yes.

17 Q Now, you drove a school bus for 33 years; is that correct?

18 A Yes.

19 Q And you had to retire due to health reasons?

20 A Yes.

21 Q Can you tell --

22 MR. ROWLETT: Object to leading, your Honor.

23 THE COURT: I'm going to allow it just to get this  
24 through. It's not substantial testimony here. Overruled.

25 BY MS. HAGH:

1 Q Could you explain to the jury the reason that you had to  
2 retire.

3 A 2009 I was diagnosed with sarcoidosis, and I had it in my  
4 feet, my lungs, and my eyes. 2010 I retired from Metro.

5 Q And when you retired in 2010 until Sabrina's injury in  
6 November of 2011, did Sabrina help you in any way?

7 A Yes. Sabrina -- because I couldn't walk I needed a  
8 driver. Because I had vision problems I couldn't see. I  
9 couldn't cook. Basically I laid in the bed for six months,  
10 and she brought me my dinner. She picked my medicine up. She  
11 ran errands. She was always there. Not only did she prepare  
12 food for me, she also prepared food for her grandparents.

13 Q And she was able to do all these things for you?

14 A Yes.

15 Q How would you describe Sabrina prior to this injury?

16 A Sabrina has always been an outgoing person, very active  
17 with her children. She went skating, swimming. We played  
18 ball, bowling. She's always been very active.

19 Q You mentioned skating, swimming. When she engaged in  
20 these activities, did she ever complain of knee pain?

21 A No.

22 Q Did she ever complain of right knee pain?

23 A No.

24 Q Did she ever have any problem skating?

25 A No.



1 Q Did she ever have to take any breaks when you were at  
2 these different venues?

3 A No.

4 Q What are some other things that you guys would do as a  
5 family?

6 A Thanksgiving we had gathering, everybody, pot luck,  
7 amusement parks, traveling. We bowled. We'd ice skate.

8 Q And how has this changed or has this changed since her  
9 injury?

10 A Yes.

11 Q And how?

12 A She's not able to walk long distance. She can't skate.  
13 The bowling is out. So everything is very limited.

14 Q And how has Sabrina's inability to engage in these  
15 activities affected her?

16 A She's not as jolly as she used to because she can't  
17 participate. She can't take Josh -- Josh is her youngest  
18 child. He's confined to the house because he can't go outside  
19 without some kind of supervision. So it has really affected  
20 Sabrina.

21 Q And how old is Joshua?

22 A 11.

23 Q And was Sabrina very involved with him in his school  
24 activities?

25 A Well, Josh is in like charter school, so there's no school

1 after hour activities.

2 Q She would take him skating or bowling outside of school?

3 A Yes.

4 Q Now, you were there for Sabrina when she had her first  
5 surgery in December 23rd, 2011; correct?

6 A Yes.

7 Q Tell, if you can, the ladies of the jury what you did for  
8 her that day.

9 A Well, I live in east Nashville. I drove to Antioch,  
10 picked Sabrina up, went to Mt. Juliet for her surgery. After  
11 the surgery, we stopped, got dinner for the kids, picked up  
12 her prescription. Then we returned to her house.

13 Q And how was Sabrina feeling that day?

14 A That afternoon when we got home, she slept, and we had to  
15 give her pain pills. And she had a -- she was -- had her leg  
16 and foot elevated.

17 Q And the next day would have been Christmas Eve; correct?

18 A Yes.

19 Q Did you see her that day?

20 A Yes.

21 Q Okay. And how did you all spend Christmas that year?

22 A Christmas, we spent Christmas Eve basically trying to do  
23 what Sabrina normally do, putting all the toys together, and  
24 we had carry-in dinner. And I drove back home.

25 Q Was Sabrina able to put up her tree?

1 A No.

2 Q Was she able to wrap any of the presents?

3 A No.

4 Q Was she able to put any of the toys together?

5 A No.

6 Q And how was that different from the prior years, the prior  
7 Christmases?

8 A Sabrina, she'd get the kids to bed, stay up putting all  
9 the toys together, putting all the presents under the tree.  
10 Then the next day she's up. Everything is laid out for each  
11 child. As they unwrap the gifts, she's picking up paper  
12 putting it in the trash. That's Sabrina. She's always  
13 picking up, cleaning up, but, like I said, that Christmas she  
14 was not able to do it.

15 Q And who would usually cook Christmas dinner or Christmas  
16 lunch?

17 A Sabrina.

18 Q Was she able to do that that year?

19 A No.

20 Q And throughout -- following her first surgery, she's had  
21 two other surgeries; correct?

22 A Yes.

23 Q And during these last three years, she's been back and  
24 forth to the doctor. What role have you played in her medical  
25 treatment, if anything?

1 A My biggest role that I've played is leaving my house,  
2 picking up Josh from school -- because Josh has asthma --  
3 taking him to the doctor, taking Sabrina back and forth for  
4 therapy, picking up meals, prescriptions. That's what I  
5 normally did.

6 Q And do you still do that today?

7 A Well, I do it as much as I can because I'm on medication.  
8 I can't sleep at night, so I sleep in the daytime. But  
9 normally I call Sabrina every morning, and I ask, you know,  
10 how was your night? And she'll say, Mama, I had a bad night  
11 because of the pain, and I'll pick up her medicine. I still  
12 transport her to and from the doctor's office and therapy.

13 Q And how often do you see Sabrina now?

14 A I see Sabrina at least three to four times a week.

15 Q And you described her earlier as being active prior to  
16 this injury; correct?

17 A Yes.

18 Q What's the biggest change you've seen in Sabrina since her  
19 injury at Wal-Mart?

20 A The biggest change is that she's basically confined to the  
21 house. Most of the time she's in the bed with her leg  
22 elevated. I just think she really misses not being able to  
23 participate with the children. She really like taking them to  
24 the ZOO. She missed "Frozen" with her granddaughter. I think  
25 that really upset Sabrina.

1 Q And how do you think she's been dealing with this  
2 emotionally?

3 A I think she deal with it the best she can, but she's not  
4 the old Sabrina.

5 Q And what do you mean by that?

6 A She's always jolly. She's always active. She's always on  
7 the go with going to the mall, eating out. She'll go to the  
8 movie because she can just sit there. But as far as going out  
9 participating and being involved in activities, she can't do  
10 that.

11 Q How has Sabrina's injury affected you, Ms. Pye?

12 A Well, it affects me because I have to leave my house in  
13 east Nashville, go all the way to Antioch, and sometimes it  
14 takes me an hour just to get to her house because of the  
15 traffic. Then I have issues with my eyes being blurry, and I  
16 have to try to be back in before it get dark. She used to  
17 be -- she would always bring me meals, so now I try to do as  
18 much as I can. And she's always calling me to see what she  
19 can do for me.

20 MS. HAGH: Thank you, Ms. Pye. I don't have any  
21 other questions for you this morning.

22 CROSS-EXAMINATION

23 BY MR. ROWLETT:

24 Q Good morning, Ms. Pye.

25 A Good morning.

1 Q Ms. Pye, do you love your daughter?

2 A I love her. I can't tell you how much I love her.

3 MR. ROWLETT: Thank you, ma'am.

4 THE COURT: All right. Thanks. You can step down.

5 Ready to call your next witness?

6 MS. HAGH: Yes, your Honor. It's going to be the  
7 second videotaped deposition of Dr. Dube.

8 THE COURT: Okay.

9 MR. MCELHANEY: Your Honor, we have exhibits to move  
10 in, Nos. 19 through 23, your Honor.

11 THE COURT: Any objections?

12 MR. ROWLETT: No, your Honor.

13 THE COURT: Okay. Admitted.

14 (Whereupon, Plaintiff's Exhibits 19 through 23 were  
15 marked for purposes of identification and admitted into  
16 evidence.)

17 MR. MCELHANEY: Just edit -- audit myself one second,  
18 your Honor.

19 THE COURT: Okay.

20 MR. MCELHANEY: Thank you.

21 (Whereupon, there was a brief pause, and then a  
22 videotaped deposition of Dr. Scott Dube was played.)

23 THE COURT: All right. Do you have another witness?

24 MR. MCELHANEY: Yes. Ms. Corley is here, your Honor.

25 THE COURT: How long do you think she'll take?

1 MR. MCELHANEY: More lengthy than what we've had so  
2 far this morning.

3 THE COURT: All right. We'll get started with her  
4 and probably stop five or ten minutes, depends on where your  
5 questioning is at the time, probably five or ten minutes  
6 before noon.

7 All right. So, Ms. Corley, if you'll come up, raise  
8 your right hand when you get up here to be sworn in.

9 SABRINA RECHELLE CORLEY,  
10 herein, having been first duly sworn, was examined  
11 and testified as follows:

12 COURTROOM DEPUTY: State your full name for the  
13 record, please, and spell your last.

14 THE WITNESS: I am Sabrina Rechelle Corley,  
15 C-o-r-l-e-y.

16 DIRECT EXAMINATION

17 BY MR. MCELHANEY:

18 Q Are you Sabrina Corley?

19 A Yes. I am Sabrina Corley.

20 Q Ms. Corley, you have a brace on your right leg; correct?

21 A Yes.

22 Q Is that the brace that Dr. Dube talked about in his first  
23 deposition this morning of prescribing to you?

24 A No.

25 Q Okay. How did you get this brace here?

1 A After my third surgery, Dr. Dube recommended --

2 THE COURT: The microphone doesn't move. You have to  
3 scoot into it.

4 BY THE COURT:

5 Q Can you get comfortably in the box?

6 A I can't straighten my leg out because it won't -- I can't  
7 sit with it bent.

8 Q Are you okay?

9 A Yes.

10 Q Okay. After your third surgery what happened?

11 A Dr. Dube recommended me -- recommended a guy that he works  
12 with to fit me for a special made brace.

13 Q Where did that fitting take place at?

14 A In Dr. Dube's office.

15 Q Is that how you got this brace?

16 A Yes.

17 Q Okay. If you need to stand or move around, you let us  
18 know. Okay?

19 A Okay.

20 Q How old are you today, ma'am?

21 A I'm 47 years old.

22 Q And are you married?

23 A No.

24 Q Do you have any children?

25 A Yes.



1 Q How many children do you have, Ms. Corley?

2 A I have three children.

3 Q Okay. Who's the oldest child?

4 A Montez Corley.

5 Q How old is Montez?

6 A He's 26.

7 Q And what's Montez doing now?

8 A Montez is working.

9 Q Does he live in the Nashville area?

10 A Yes.

11 Q How often do you see Montez?

12 A Every day.

13 Q Okay. Does he have children?

14 A Yes.

15 Q How many children does Montez have?

16 A Montez has a six-year-old daughter, and Montez has a

17 daughter on the way, December 21st.

18 Q And who's your next oldest child?

19 A Montesha Corley.

20 Q How old is Montesha?

21 A Montesha is 23.

22 Q And what's Montesha doing?

23 A Montesha is going to cosmetology school.

24 Q Does she live in the Nashville area?

25 A Yes.

1 Q How often do you see Montesha?

2 A Every day.

3 Q Now, do they live with you?

4 A Yes.

5 Q All right. Does Montesha have any children?

6 A Yes. Montesha has a three-year-old daughter.

7 Q And your third child, the youngest, is Joshua?

8 A Joshua Kelton (phonetic).

9 Q And how old is Joshua?

10 A Joshua is 11 years old.

11 Q Now, is Joshua your biological child?

12 A No.

13 Q How did you come to have Joshua as a child?

14 A Joshua's mom was a co-worker of mine. She was pregnant at  
15 the time. She was thinking about not keeping her baby. I  
16 talked to her, well, let me help you. Let me be the  
17 godmother. She said okay. Joshua was born July the 10th,  
18 2003. I was there when she had her C-section that morning.  
19 I'm home cleaning waiting on, you know, in preparation for the  
20 baby. I got a call from the hospital, Joshua's biological  
21 mom. Please get here now. Joshua, I guess when they do the  
22 blood test, had drugs in his system.

23 At this time Joshua had a three-year-old sister,  
24 which DCS got involved, had a placement plan to help Joshua's  
25 mom get on her feet, get her habit under control so she can

1 have her kids back. We did that for a couple of months. We  
2 went to court. The judge awarded her her kids back. We  
3 walked out of the courtroom. She said, you know I don't want  
4 him. I did carry him every day of his life. Josh was my son,  
5 my son. She never wanted him, so I've had him since July the  
6 10th, 2003.

7 Q Is that when he came home from the hospital?

8 A He came home from the hospital July the 11th or 12th, the  
9 following day.

10 Q And he calls you mom?

11 A Yes.

12 Q Does he know anything about his biological mother?

13 A No.

14 Q Okay. And so you've raised him as a single mother since?

15 A Yes.

16 Q Do you have any papers that, legal papers, that make you  
17 his mother or guardian or --

18 A I have paperwork that the judge ordered legal  
19 guardianship.

20 Q Have you adopted Joshua yet?

21 A No, not yet, but I'm going to.

22 Q Tell me about your education. Did you go to high school?

23 A Graduated from high school.

24 Q Which high school did you graduate from?

25 A John Overton.

1 Q And do you remember the year you got out?

2 A 1985.

3 Q And at that point in time, what plans did you make for  
4 your life after school?

5 A Just work, enjoy life, have fun.

6 Q And did you go on to college at that point?

7 A No, I didn't. I just worked.

8 Q Where were you working in the '85, '86, '87 time period?

9 A After I graduated, I worked at a daycare center. I always  
10 loved kids. I always had somebody's child with me.

11 Q And what did you do at the daycare center?

12 A I was working in the three- and four-year-old room.

13 Q And what did you do after that?

14 A I worked, stayed and enjoyed my life. I didn't have any  
15 kids.

16 Q How old were you if -- Montez is 27?

17 A Yes.

18 Q So you were about what?

19 A About 20. He was born August 30th. I was turning 21  
20 September the 10th.

21 Q And tell me about -- soon after that, you had Montesha  
22 about a year later, year and a half?

23 A Three years later.

24 Q Three years later. Okay. And tell me about your life  
25 with your children.

1 A My kids are my life. I'm mommy. I'm the cook. I clean.  
2 Whatever they're involved in I'm going to be there. I don't  
3 depend on anyone to take my kids to basketball games.  
4 Montesha was a cheerleader so I'm very -- I lived at McGavock  
5 High School. Competitions. I'm driving. I'm a very involved  
6 parent.

7 Q Was your house the gathering house for the kids?

8 A My house was the house. For some reason all of the  
9 friends wants to come to Montesha's house, all of the  
10 cheerleaders, every day after cheerleading practice because we  
11 know Ms. Sabrina is going to cook. On Sunday's Ms. Sabrina is  
12 going to cook. Mama, that's what I am to all of them, mama.  
13 They've had cheerleader games where we're all stuck at  
14 Glencliff in the snow. We all piled in two cars drove to my  
15 house.

16 Q And what kind of meals are these at this time we're  
17 talking about when Montesha is in school?

18 A Meat, greens, vegetables, no fast food, no hot dogs. I'm  
19 a soul food cook, dessert and all.

20 Q And you'd make a big enough spread for all the  
21 cheerleaders?

22 A I'd make a big enough spread for the cheerleaders, the  
23 cheerleaders' mom, my mom.

24 Q And you'd be up on your feet doing this?

25 A I'm up on my feet four, five, six hours cooking.

1 Q I want to go ahead and get a question out of the way real  
2 quick. It's an important one. Before you went to Wal-Mart on  
3 November 7, 2011, did you ever have any problems with either  
4 of your knees?

5 A No.

6 Q Before you went to Wal-Mart on November 7, 2011, did you  
7 ever have any problems with your right knee?

8 A No.

9 Q Since you slipped and twisted in that water, has there  
10 been a moment in your life you haven't had trouble with your  
11 knee since?

12 A No; daily, every day.

13 Q Tell me more about some of the work you did as you were  
14 raising those kids, that boy and that girl, Montez and  
15 Montesha. You have not had a career, have you, ma'am?

16 A No.

17 Q Tell me some of the jobs you've done.

18 A Customer service, worked in collections, worked for  
19 Medicare D filling, you know, 65 plus, filling their refills  
20 for their medication, making sure they have refills on  
21 diabetic supplies that they're needing, customer service.

22 Q Do these jobs, some of them, cause you to be on your feet  
23 for long periods of time?

24 A Some of them required me to be on my feet.

25 Q Did you ever have any trouble being up on your feet to

1 work?

2 A Prior to November the 7th, no.

3 Q And at the time you went to Wal-Mart, did you have a job  
4 at that time?

5 A Actually, my job had just -- assignment had ended, and  
6 they had found me another one a couple of weeks later, which I  
7 was unable to take.

8 Q You were working through a temp agency?

9 A Yes.

10 Q Okay. And where had the assignment been that had just  
11 ended?

12 A I was working at the Tennessee Towers doing data entry  
13 where we were going paperless. Every piece of paper that they  
14 had they wanted inputted in the computer.

15 Q And so you were doing that job, and that temp assignment  
16 ended?

17 A Yes.

18 Q Do you know where the next place would have been?

19 A The Department of Safety. And it was a temp to hire.

20 Q Now, before you got Joshua, I want to talk in that  
21 timeframe about your adult life. Your kids would have been  
22 teenagers, your biological children. When you got Joshua,  
23 they would have been teenagers; right?

24 A Yes. I think Montesha was 12.

25 Q Okay. Tell me a little bit more about -- you've told me

1 about the cheerleaders coming to your house and talked about  
2 how that was at your house, but tell us some more about how  
3 your life was outside your house, activities that you enjoyed  
4 doing that were physical.

5 A We'd skate. We bowled. We shopped. Cheerleader  
6 competition. I helped base. I helped with routines,  
7 cheerleading routines.

8 Q Do you like to dance?

9 A I love to dance. Family gatherings, Sabrina teach us the  
10 twang because I know you know it.

11 Q Is this -- I've seen some cheerleading stuff on ESPN from  
12 time to time. Is this like the hiphop dancing?

13 A Hiphop. Montesha was in dance. She'd ballet. So we'd do  
14 it all. We did it all.

15 Q Did you ever have any trouble with your knee when you were  
16 dancing?

17 A No.

18 Q When you say you'd base, that's a cheerleading term?

19 A Yes. If they would miss, you know, a back spot --  
20 Montesha was a flier -- I would get in the back when they're  
21 working on a routine and get down and base her, actually help  
22 hold her up.

23 Q Did you have any trouble with your knee doing that?

24 A No.

25 Q Okay. Tell me about your life with Joshua. As he got



1 into school and activities, how was your life then?

2 A Well, I was, again, very involved, go on field trips,  
3 going to school, eating lunch with the child -- they enjoyed  
4 having mom come to the school -- go to the parent teacher  
5 conferences, just daily activities, taking him. We'd go to  
6 the park. We'd go to Opryland Hotel during Christmastime,  
7 look at the lights. We'd drive around Christmastime looking  
8 at all the lights.

9 Q Did you go to ICE up there at Opryland?

10 A We went to ICE, the Rockettes, the snow. I would take  
11 him. Mom, can we go to the movies? Yes. Mom, can we go  
12 skating? Yes. Mom can we go bowling? Yes. He's 11. Enjoy  
13 your life, baby.

14 Q How old was he at the time you were injured?

15 A Nine.

16 Q Okay. And is this --

17 A Sorry. Eight.

18 Q Eight. And is this what was going on then, when he was  
19 eight?

20 A Yes.

21 Q Okay. Did you have any trouble doing the activities  
22 with him?

23 A No.

24 Q Now, you were talking about going to the park. I've got  
25 some small kids. I've been to the park. Some moms sit. Some

1 moms play. What were you doing at the park before you were  
2 injured?

3 A I'd play.

4 Q What kind of playing did you do at the park with your son?

5 A I would sit in -- I can swing. I can slide with him. I  
6 can run around, monkey bars. I interact with him. I don't  
7 just sit and watch.

8 Q You spoil him?

9 A He's been spoiled rotten.

10 Q Let's talk about the day of going to Wal-Mart on  
11 November 7. What was -- how did that day start out?

12 A That morning I had Joshua. I'd take him to the school.  
13 Back at home preparing. When I wake up, fix him some lunch.  
14 That day there was not any salad dressing, so he went ahead  
15 and took his lunch without salad dressing. I went ahead with  
16 my daily activities, come back, clean, cook, wash, laundry,  
17 whatever, go check on my mom because that's what I do, make  
18 sure she's okay, pick Joshua up from school. He said, Mom,  
19 can we go get the salad dressing for my lunch?

20 Q When you say salad dressing?

21 A Miracle Whip.

22 Q When you and I had that discussion, I thought maybe you  
23 were talking about ranch or --

24 A No; Miracle whip for his sandwiches.

25 Q Okay. All right. I don't eat mayonnaise, so I was

1 confused. You had to explain it to me. Okay. So you go to  
2 Wal-Mart?

3 A Yes.

4 Q And is the Hamilton Church Road your normal Wal-Mart that  
5 you would go to?

6 A Yes.

7 Q Okay. You've been there times before?

8 A Yes.

9 Q And what's your -- when you're going to Wal-Mart, what's  
10 been your experience there with -- as far as your purchasing  
11 experience and things of that nature?

12 A Wal-Mart is a one-stop shop. You go in. You can -- I'm a  
13 female. I'm going to go in the clearance departments. I'm  
14 going to go through different aisles. But it's been clean,  
15 safe, and good prices.

16 Q What's important to you in picking a place to go shop,  
17 Ms. Corley?

18 A Clean, safe, and good prices.

19 Q And do you feel like that Wal-Mart had provided that to  
20 you up to that point?

21 A Up to that point, yes.

22 Q Did -- do you think they provided you a safe environment  
23 that day?

24 A No.

25 Q When you came down the aisle and you made the turn into

1 Aisle 6, did you see any water on the floor?

2 A No.

3 Q Have you ever worked at a place where you ever received  
4 training to look out for things like that?

5 A No.

6 Q You were there to shop?

7 A Yes.

8 Q Now, were you being safe for your own -- were you looking  
9 out for yourself that day?

10 A Yes.

11 Q When you turned down that aisle, do you remember what was  
12 down there you were looking at or for?

13 A Miracle Whip. It's the aisle the salad dressing, ketchup,  
14 pickles, and all that is on.

15 Q So that's on that aisle. Okay. Now, were you in the  
16 courtroom yesterday when Mr. Hicks took the stand?

17 A Yes.

18 Q And did you hear him say that Wal-Mart's position now is  
19 that the water may have been spilled by somebody in that aisle  
20 after you turned down it?

21 A Yes.

22 Q Was there anybody in that aisle besides you, Ms. Corley,  
23 when you turned down it?

24 A Me, Sabrina, and Joshua, my son.

25 Q Did you or Joshua have water that you spilled?

1 A No.

2 Q Did Joshua kick anything or knock anything off the shelf?

3 A No.

4 Q Did you kick anything or knock anything off the shelf?

5 A No.

6 Q Is there any way, based on you being in that aisle, that  
7 after Ms. Smith walked by on the video, somebody inside that  
8 aisle made that spill?

9 A No.

10 Q And how do you know that?

11 A I was the only one in the aisle, me and Joshua.

12 MR. MCELHANEY: Your Honor, you want to take the  
13 break now?

14 THE COURT: Yeah. You're ready?

15 MR. MCELHANEY: I was just going for ten minutes like  
16 you had said.

17 THE COURT: Okay. Yeah. That works. All right.  
18 We're going to take a lunch. We'll be back here at 1:00  
19 o'clock.

20 (Whereupon, the jurors exited the courtroom.)

21 THE COURT: All right. I'll see y'all back here at  
22 1:00.

23 MR. ROWLETT: Your Honor, are we going to talk just a  
24 second about witness planning and timing or when I need to  
25 have people here and that kind of thing?

1 THE COURT: Well, I don't know --

2 MR. MCELHANEY: We can talk about it, your Honor.

3 THE COURT: Yeah. Y'all can talk about it.

4 COURTROOM DEPUTY: All rise, please.

5 (Whereupon, a recess was taken from 11:52 a.m. until  
6 1:14 p.m.)

7 COURTROOM DEPUTY: All rise, please.

8 THE COURT: Thanks. Y'all can be seated. All right.  
9 You're ready?

10 MR. MCELHANEY: Yes, your Honor.

11 THE COURT: Okay. We'll bring them back in.

12 (Whereupon, the jurors entered the courtroom.)

13 THE COURT: All right. Thanks. Y'all can be seated.  
14 Go ahead.

15 BY MR. MCELHANEY:

16 Q Ms. Corley, when you came out of Aisle 6, did you see the  
17 water on the floor then?

18 A No.

19 Q What happened?

20 A Walking down the aisle, and I slipped.

21 Q Speak up.

22 A Walking down the aisle, and I slipped, twisted.

23 Q And did you -- what happened then with your knee, anything  
24 that you remember?

25 A It twist and then like a little -- I felt a little pop.

1 Q Okay. And can you describe what the pop --

2 A It's like if I'm -- if you're holding your knuckles, and  
3 you feel it. And it just felt like a pop. It's hard to  
4 describe, but it's like if you're -- say if your hand is  
5 locked or something, like my wrist just popped with a sudden  
6 movement.

7 Q Had you ever had anything like that ever happen to your  
8 knee before?

9 A No.

10 Q What happened after that? Was your knee okay or were you  
11 having pain?

12 A No. I was having pain.

13 Q And you can see on the video you were looking around. Did  
14 you look down and see what you were -- stepped in?

15 A Yes. I looked. I felt -- did the pop and twist, and I  
16 looked down. And then it was water on the floor. I looked  
17 up, just a basic reaction.

18 Q Did you see anything when you looked up that you could  
19 tell?

20 A No. I thought I -- I thought I saw a drip, but I can't  
21 say.

22 Q You can't say for sure?

23 A I can't say for sure. But I'm more focusing on okay, oh,  
24 what, you know, I see the water on the floor.

25 Q And then what did you do next?

1 A I stood there for a minute. Then I went to go find  
2 someone to tell, a Wal-Mart worker.

3 Q And did you find someone?

4 A Yes.

5 Q Do you remember who you found?

6 A Katrina.

7 Q And do you remember anything about your conversation with  
8 Katrina?

9 A I told Ms. Katrina that I had slipped on some water and I  
10 showed her -- pointed to the aisle where I slipped. And she  
11 told me to go up to the service desk and file an incident  
12 report, and she went toward the spill.

13 Q Did she tell you -- did she ask how you were doing or  
14 anything else?

15 A No.

16 Q And then what did you do next?

17 A I limped on up to the -- going toward the service desk we  
18 passed the check out. I paid for my couple of items, and I  
19 went right to the service desk. And I filled out an incident  
20 report along with Ms. Katrina. She filled out an incident  
21 report.

22 Q She met you up there?

23 A She met me up there.

24 Q Now, when you say you limped off, you saw the video. Is  
25 that what you were talking about, when you went up the aisle?



1 A Yes.

2 Q Okay. Now, has there been a time that you recall since  
3 you started up that aisle after talking to Katrina, that you  
4 haven't limped?

5 A No. I've never limped.

6 Q Before this you had never limped?

7 A Before the issue, before the incident.

8 Q Since then, have you ever gotten to the point where you've  
9 gotten better where you didn't limp?

10 A No. I have a limp.

11 Q And do you limp every day of your life?

12 A Yes.

13 Q How do you deal with that? How do you deal with that  
14 emotionally?

15 A It's mentally, physically. You know, you're walking.  
16 People are looking at you. You know, it's painful because  
17 when you're walking different, you're putting more -- you  
18 know, you're off balance. It puts pain -- you know, my lower  
19 back was -- and I was hurting in my lower back from the  
20 shifting.

21 Q And you told Dr. Dube about that?

22 A Yes.

23 Q Now, during the break, before the ladies of the jury came  
24 back in, we repositioned you in that seat. And why did we  
25 need to do that?

1 A It's hard sitting a certain way, sitting for a long time.  
2 You see me take my foot, now put my right leg on top of my  
3 left foot to keep my leg -- to try to lift it up. Staying in  
4 one position or if I stay too long, get up, and I may feel,  
5 you know, a little -- my leg crack or pop. Staying in one  
6 position is hard. That's why I stand up.

7 Q And have you been doing anything else during the last two  
8 days of trial to try to make yourself feel better in the  
9 courtroom?

10 A Yes.

11 Q Tell us about that.

12 A I use Mr. Rocky's briefcase to prop my foot up on, my leg  
13 up on, and I occasionally get up. I take my foot, take my  
14 left foot, and hold it up and put my leg on the top of the tip  
15 of my foot.

16 Q You've been using my briefcase as a footstool?

17 A Yes.

18 Q How does that help you to lay your foot up on that?

19 A It's uncomfortable.

20 Q How does it make it feel better?

21 A It doesn't make it feel better. It's just repositioning.  
22 I can't stay positioned for a long time.

23 Q Okay. When you paid for your items and did the incident  
24 report, did you fill out a handwritten report?

25 A Yes.

1 Q Okay. And did you go home or did you go straight to the  
2 doctor or what happened after you left Wal-Mart?

3 A I went home.

4 Q How were you feeling?

5 A In pain.

6 Q On a scale of one to ten, what was your pain level?

7 A It was about eight and a half.

8 Q Okay. And when did you first go to the doctor?

9 A The following morning.

10 Q Where did you go?

11 A The Hope Family Medical Center.

12 Q Was that your primary doctor at the time?

13 A Yes.

14 Q Okay. Do you recall what they did for you?

15 A She gave me pain medicine and prescribed me some crutches  
16 to kind of stay off it.

17 Q Did they take any x-rays?

18 A She did an x-ray.

19 Q And --

20 A Sent me home.

21 Q How was the next few days at home?

22 A The pain got worse.

23 Q And what do you mean by that?

24 A I was hurting, pain. The pain medicine wasn't helping.

25 Q Were you having to put any weight on it?

1 A No.

2 Q Did you use the crutches as the doctor told you to?

3 A Yes.

4 Q What else -- did you go back to Hope at that point, at  
5 some time?

6 A Yes.

7 Q Okay. What did they do then?

8 A She referred me -- I had a -- to get an MRI and referred  
9 me to Dr. Dube.

10 Q Now, this may be an important question. Did you have  
11 anything to do with picking Dr. Dube as your surgeon?

12 A No.

13 Q At that point in time you had not talked to any lawyers,  
14 had you?

15 A No.

16 Q So just for the record, your lawyers had nothing to do  
17 with picking Dr. Dube?

18 A No.

19 MR. ROWLETT: Object to leading.

20 THE COURT: Sustained.

21 BY MR. MCELHANEY:

22 Q Did anyone that you know, besides your primary care  
23 doctor, have anything to do with you going to Dr. Dube?

24 A No.

25 Q Okay. Do you remember when you first saw him?

1 A Yes.

2 Q And that was in early December?

3 A Yes.

4 Q Now, between November 7, when you were injured, and  
5 December 6, when you finally got to see Dr. Dube, how was your  
6 pain in that month?

7 A Always hurting, taking pain medicine. Pain medicine  
8 wasn't helping, couldn't put weight on my leg, unable to  
9 drive.

10 Q How were you able to take care of Joshua?

11 A My mom, Montesha, they would take him to school, pick him  
12 up from school. My mom would bring a meal because I was  
13 unable to stand up and cook.

14 Q What did Dr. Dube recommend for you?

15 A The surgery.

16 Q And how did you feel when you heard that?

17 A Surgery on December the 23rd wasn't good at all. It was  
18 Christmas.

19 Q Why did you go ahead and do it?

20 A It needed to be done, and I wanted to get better.

21 Q How did surgery go after -- when you got home from  
22 surgery, how were you feeling?

23 A I was in pain. I had compressors on my leg that I had to  
24 keep on there while I was -- any time I was sitting and  
25 laying, pain medicine, laying in the bed.

1           MR. MCELHANEY: I've got marked Exhibit 16, please,  
2 the photograph that's been shared.

3           THE COURT: Objection?

4           MR. ROWLETT: No objection. Sorry.

5           THE COURT: Admitted.

6           (Whereupon, Plaintiff's Exhibit 16 was marked for  
7 purposes of identification and admitted into evidence.)

8 BY MR. MCELHANEY:

9 Q   Ms. Corley, we've got Exhibit 16 on the screen. Can you  
10 tell me what this is?

11 A   My right knee.

12 Q   Is this after the first surgery?

13 A   Yes.

14 Q   And is this how it looked after Dr. Dube did the surgery  
15 when you got home?

16 A   Yes. But I had -- when I first got home, I had a bandage.

17           MR. MCELHANEY: Okay. I have a couple more pictures.  
18 Could I move in No. 17, your Honor?

19           MR. ROWLETT: No objection.

20           THE COURT: Admitted.

21           (Whereupon, Plaintiff's Exhibit 17 was marked for  
22 purposes of identification and admitted into evidence.)

23 BY MR. MCELHANEY:

24 Q   Is this your legs, Ms. Corley?

25 A   Yes.

1 Q And is this some of the bandaging that Dr. Dube put you on  
2 when you came home?

3 A Yes.

4 Q What's the device laying on the floor and the cords going  
5 to those stockings?

6 A It keeps my blood flowing so it squeezes. It's like  
7 something you have to use to keep your blood flowing after  
8 surgery to prevent blood clots.

9 Q How was your pain level at this point?

10 A Beyond a 10.

11 Q Were you able to get around at all?

12 A No.

13 Q How long were you confined after the first surgery?

14 A Oh, the weekend, Christmas Eve, Christmas day. I kept  
15 those on until I went back to see Dr. Dube.

16 MR. MCELHANEY: All right. I've got one more  
17 photograph, No. 18, your Honor.

18 MR. ROWLETT: No objection.

19 THE COURT: Admitted.

20 (Whereupon, Plaintiff's Exhibit 18 was marked for  
21 purposes of identification and admitted into evidence.)

22 BY MR. MCELHANEY:

23 Q Here's another photograph of you laying after surgery?

24 A (No response.)

25 Q Yes, ma'am?

1 A Yes.

2 Q And you've still got those stockings on?

3 A The compressors, yes.

4 Q All right. And you heard your mom talk about Christmas.  
5 Can you -- from your standpoint what was it like not being  
6 able to do the stuff for Joshua that you had always done for  
7 eight years before?

8 A It was the worse Christmas of my life. I'm the one that  
9 does all the wrapping, putting up the tree, putting the toys  
10 together, you know, doing marshmallows in the fireplace, you  
11 know. We had furniture, but we still made pallets on the  
12 floor in front of the fireplace and watched Christmas movies.  
13 Christmas Eve I wasn't at the stove cooking dinner. I was in  
14 so much pain I just laid. Christmas day I'm laying. I'm not  
15 enjoying Christmas like I had previous done with Joshua. I'm  
16 just laying in pain.

17 Q How important to you -- and you were in your forties at  
18 this point. How important to you were the holidays just in  
19 general?

20 A Holidays are very important to me.

21 Q And have the holidays been the same for you since you were  
22 injured at Wal-Mart?

23 A No.

24 Q How is it different?

25 A I can't decorate. I can't do all the standing up, the



1 cooking, you know. I'm the type after Christmas, I want my  
2 tree down. I want all the gifts, you know, put where they go,  
3 all the clothes. I want my living room cleaned back up.

4 Q And we grew up leaving the Christmas tree up after  
5 January 1st, but you got it down quicker?

6 A I clean up. I clean.

7 Q Okay.

8 A In the evening everything is back to normal. The kids are  
9 still playing.

10 Q But you're getting your house in order?

11 A I get my house in order.

12 Q Now you can't do that?

13 A No.

14 Q You said you decorated. Before you were injured would you  
15 decorate up on ladders and things like that?

16 A Yes.

17 Q Doing the high decorating in the house?

18 A The high decorating.

19 Q Can you do that now?

20 A No.

21 Q Who decorates for you?

22 A My daughter, she decorates, but she don't decorate like I  
23 decorate.

24 Q So every Christmas since has just not been the same for  
25 you?

1 A Christmas is not the same at all.

2 Q Let's go back to the surgery. How did you recover? Take  
3 us through the recovery period.

4 A Had my surgery Friday the 23rd. Tuesday I was in physical  
5 therapy.

6 Q What did you do at physical therapy?

7 A Dr. Dube -- next to Dr. Dube's office there's a therapy  
8 center right there. Right next door to his office, he has the  
9 therapies there.

10 Q And how was therapy? Was it easy? Was it hard?

11 A Hard, painful. I still have stitches in there, trying to  
12 make you bend your knee, trying to get on the bike, work it  
13 out, try to work. I'm swollen. It's painful.

14 Q Did you give it your best effort?

15 A Yes.

16 Q Did the surgery help you?

17 A The surgery helped temporarily.

18 Q Then what happened?

19 A I was -- had to go get gel injections, cortisone shots,  
20 continue physical therapy.

21 Q Now let's talk about the gel shots and the cortisone  
22 shots. When those were given to you, do they feel the same or  
23 can you tell the difference in what shot you're getting?

24 A The cortisone -- well, both of them hurt, but the gel,  
25 it's a liquid there injected in your knee with a needle. And

1 it's gel, so it's a little more painful.

2 Q When they put the needle in, on a one to ten scale how is  
3 that pain?

4 A Ten.

5 Q And then does -- are you in pain for a while after the  
6 shot or do you immediately start feeling better?

7 A No. You're still in pain after the shot.

8 Q How long does it take for the gel to work?

9 A A couple of days.

10 Q Has it worked for you in the past, the gel, to make you  
11 feel better?

12 A The gel has worked temporarily. I would feel better for a  
13 while.

14 Q How many days or weeks or ever how you can describe it  
15 does the gel work for you? How long does it work?

16 A Well, I would have to go get a gel shot once a week.

17 Q Is that every week or just for a series?

18 A For a series.

19 Q And then how long would it be before you would get another  
20 series?

21 A Couple of -- maybe a couple of months.

22 Q Okay. So as you went through this -- are you okay? Do  
23 you need a break?

24 A No. I'm fine.

25 Q As you would go through your treatment with Dr. Dube,

1 would you be telling him your complaints when you went in?

2 A Yes.

3 Q And then did there come a time when you and Dr. Dube  
4 discussed another operation?

5 A Yes.

6 Q Did you ask for it? Did he bring it up? What happened?

7 A No. I continued to have pain with going down -- up the  
8 steps and felt a little -- a pop. And so I called Dr. Dube's  
9 office and let them know.

10 Q Are steps hard for you or easy? Are they different from  
11 the way they were before?

12 A Yes.

13 Q Tell us about that.

14 A Well, it takes me so much longer. I go up the steps like  
15 my grandbaby, step, step, step. And I always hold the rail,  
16 otherwise my walking -- my knee could give out on the steps.  
17 Coming down I hold the rail. I step, step, step by step.

18 Q Do you have steps in your home?

19 A Yes.

20 Q And where is your bedroom located?

21 A Upstairs.

22 Q Where is the washer and drier located?

23 A Downstairs.

24 Q Has that impacted your life?

25 A Yes.

1 Q Tell us about it.

2 A When I do the laundry, I take a pile, and I just go to the  
3 top of the steps and just throw it down to the bottom of the  
4 steps.

5 Q Did you do it that way before?

6 A No.

7 Q How do you get it back upstairs?

8 A Montesha, Montez, Joshua.

9 Q Who took care of the laundry before you were injured?

10 A I did.

11 Q Has the location of your bedroom being on the second floor  
12 impacted your movement in your house any other way other than  
13 just the laundry?

14 A Daily if I don't have to go downstairs, I don't go or if I  
15 have to go downstairs, I do everything I need to do while I'm  
16 downstairs so when I go back upstairs, I don't have to go back  
17 down.

18 Q When you go up or down your steps, does it make your pain  
19 increase?

20 A It increases the pain.

21 Q Okay. And how long does it take for the pain then to go  
22 away if you go up or down the steps and make the pain worse?

23 A Take pain pills. It may take a couple of hours to work.  
24 It may work for temporarily. Then the pain comes back.

25 Q Ms. Corley, did you have a second surgery with Dr. Dube?

1 A Yes.

2 Q Okay. And how did that go?

3 A Again, physical therapy all over again, the pain all over  
4 again, anesthesia all over again.

5 Q And how did that process go? Was it as painful a second  
6 time as the first time?

7 A It was a little painful. It took a little longer.  
8 Physical therapy was longer.

9 Q Now, you've had a third surgery; correct?

10 A Yes.

11 Q And have you and Dr. Dube discussed what we heard him talk  
12 about, ultimately you'll need a knee replacement?

13 A Yes.

14 Q And what's your thoughts about that?

15 A I want to get my life back. I want -- I'm okay with it.  
16 He's my doctor. I want my life back. If a knee replacement  
17 is going to help, I want it done.

18 Q So far have you been able to get your life back?

19 A No.

20 Q Is anything about this for you getting better over time?

21 A No; worse.

22 Q It's getting worse?

23 A (Nods head.)

24 Q Tell us.

25 A When I'm in pain management, take pain medicine every day.

1 I sleep most of the day. I can't drive, take Joshua to  
2 school, pick Joshua up. I take a pain pill, I can't do  
3 anything.

4 Q Dr. Dube referred you to pain management after the third  
5 surgery?

6 A Yes.

7 Q What are your thoughts about that?

8 A Pain management, pain pills, I don't want to get addicted  
9 to just pain pills. I don't want my life, every day of my  
10 life sleeping, unable to -- you know, I'm a mother. I'm a  
11 grandmother. My life is very limited. I just don't want to  
12 be taking pills for the rest of my life. I don't want to hurt  
13 the rest of my life. I want to be able to get around, do  
14 things for my son, my grandbaby. I can't even keep my own  
15 grandbaby because I'm sleep. I can't give my grandbaby a  
16 bath. I can't enjoy family time like I used to.

17 Q How are you handling this emotionally, Ms. Corley?

18 A It's hard. It hurts. Taking a bath I have to sit on the  
19 tub, turn myself around to get in the tub, take a bath, get  
20 up, sit back on the tub. I can't take a normal shower or  
21 nothing, you know. It's -- can't do it. I can't -- sometimes  
22 I have an accident trying to get to the bathroom because I  
23 can't move as fast as I can, wake up and have to go. I don't  
24 always make it.

25 Q Has that happened to you in public?

1 A Yes. If I go out, I can't go to a public bathroom. You  
2 can't just -- because you're not going to -- you can't squat  
3 as hard. But it's why I just stay home. I walk, and my knee  
4 give out. I don't ever know when it's going to happen, so I  
5 stay home.

6 Q Ms. Corley, do you need a break, ma'am? Are you okay?

7 A (Nods head.)

8 Q We heard you say a few minutes ago that you take Joshua to  
9 the movies still because that's something you can do?

10 A Yes.

11 Q Has your movie going -- when you get there, how does that  
12 go?

13 A I'll get there early because the movies we go to they have  
14 one seat that's like a loveseat. I try to get there so I can  
15 sit in that seat and prop my leg up.

16 Q Can you sit inside the regular aisles long enough to watch  
17 a movie?

18 A No.

19 Q Has the injury impacted your church activities at all?

20 A Yes.

21 Q How important to you before this was church?

22 A Church is very important to me.

23 Q Where were you going at the time of this?

24 A We were going to Mt. Zion.

25 Q And are you still going there or have you changed?



1 A Now I'm at Lake Providence.

2 Q Okay. And you've been going your whole life?

3 A Yes.

4 Q How is your church different now because of your leg?

5 A Well, I have to dress different. I was raised  
6 well-dressed, stockings, heels to church. You dress  
7 appropriate for church. Now I have to wear leggings. I have  
8 to sit on a pew that I can prop my leg up on. Sometimes  
9 church is crowded. I may have to get up and go out because I  
10 can't put my leg up and other people are trying to sit on the  
11 pew, and I can't sit a long time with my leg just straight  
12 because people are trying to walk back and forth.

13 Q Has it impacted your ability to participate to be in the  
14 choir, things like that?

15 A Oh, yes.

16 Q Tell us.

17 A No more standing up singing in the choir, rocking, going  
18 to choir rehearsal. When I'm on pain pills, can't drive  
19 myself to church. I don't want to be standing up there in  
20 church on pain medicine, so I just don't do it.

21 Q Has your family helped you out?

22 A Yes.

23 Q What role has your family played in you being able to deal  
24 with this?

25 A Well, my daughter, she does a lot of driving, my errands,

1 cleaning.

2 Q What about your mom?

3 A My mom is awesome. Even with my mom having an illness she  
4 put her illness aside to take -- to help me.

5 Q Ms. Corley, when do you not have pain now in your life?

6 A I have pain every day.

7 Q And when you say every day, are we talking at some point  
8 every day? Are we talking all day every day?

9 A When I'm not taking a pill. I have pain now.

10 Q As you sit here?

11 A As I sit here. I couldn't take my pain medicine this  
12 morning. I couldn't take my pain medicine yesterday. I have  
13 to be here.

14 Q How does the pain medicine affect you? Does it?

15 A It makes -- it's like a drowsiness feeling.

16 Q Your sleep, has it been affected?

17 A Yeah. I sleep about two or three hours. Then I'm awake.

18 Q What wakes you up?

19 A It's uncomfortable, pain.

20 Q Pain where?

21 A In my knee.

22 Q Before you were injured at Wal-Mart did you sleep well?

23 A Yeah. I slept good.

24 Q Have you had a good night's sleep since?

25 A Not a good night. If I get four and a half hours, that's

1 a good night.

2 Q How often does that happen for you?

3 A Not often.

4 Q During these days, when you wake up -- well, let me ask it  
5 this way: Each day when is your pain at its best, when it's  
6 hurting the least? And when is your pain at its worst, when  
7 it's hurting the most?

8 A It doesn't have a time, mornings, late at night, in the  
9 afternoon, sometimes at night.

10 Q How long does it take you to get going in the morning when  
11 you get out of bed?

12 A First I have to get out of bed. May sit on the edge of  
13 the bed about 10 or 15 minutes, get down and start moving  
14 around.

15 Q Do you wear the brace every day?

16 A Yes.

17 Q Are there any special instructions with the brace?

18 A Wear it every day except for when you're sleeping and  
19 taking a bath. It has to be worn on the skin, which I said  
20 leggings was the only option because they're so thin. It  
21 can't be worn with jeans.

22 Q Before this happened to you did you used to like to wear  
23 jeans?

24 A Yes. I love jeans.

25 Q Can you wear jeans now?

1 A No.

2 Q Let's talk about your activity a little bit. Okay? How  
3 has this injury impacted the things that are most important to  
4 you, Ms. Corley?

5 A I'm unable to -- my mobility, moving around, just daily  
6 life.

7 Q Is it getting any better?

8 A No.

9 Q Now, Ms. Corley, have you done everything Dr. Dube has  
10 told you the best of your ability?

11 A Yes.

12 Q There was some talk about you losing some weight. Did he  
13 tell you to lose some weight?

14 A He said it would help me, and for my own personal life I  
15 wanted to get weight off of me.

16 Q And did you work hard to do that?

17 A Yes.

18 Q How much weight did you take off?

19 A 46 pounds.

20 Q Did that make your knee feel better?

21 A No.

22 Q Have you -- are you still down the 46 pounds or have you  
23 put any back on?

24 A I put it back on.

25 Q All of it? Some of it?

1 A All of it.

2 Q Is that because you're just not moving around?

3 A I'm not moving around, no kind of exercise or anything.

4 Q Ms. Corley, I want to ask you some questions about the  
5 claims in the lawsuit for a couple minutes. Okay? At the end  
6 of the case the jury will be given some elements to consider  
7 of your harms and losses. I'm going to ask you if you're  
8 asking the jury to award those for you. Okay? The medical  
9 expenses you've incurred -- can we get the light down one  
10 second? This is Exhibit No. 22 for the trial, Ms. Corley.  
11 Are you asking the jury to award you the medical expenses  
12 you've incurred so far of \$129,068.50?

13 A Yes.

14 Q The jury heard Dr. Dube talk about the cost of the future  
15 knee replacement surgery -- you can turn the lights back up,  
16 thank you -- being \$60,000. Are you asking the jury to  
17 compensate that?

18 A Yes.

19 Q You heard Dr. Dube talk about the fact that you have other  
20 gel shots and physical therapy and a, more likely than not, a  
21 fourth arthroscopic surgery before the knee replacement. Are  
22 you asking the jury to award those future costs as well?

23 A Yes.

24 Q The suffering you've done with this injury since the day  
25 of the injury through the day of this trial, are you asking

1 for the pain and suffering compensation?

2 A Yes.

3 Q And for the rest of your life for what you're going to  
4 have to deal with?

5 A Yes.

6 Q Now, there's an element of damage called loss of enjoyment  
7 of life. Are you enjoying your life the way you were before?

8 A No.

9 Q And you've described that to us today; right?

10 A Yes.

11 Q Are you asking the jury to consider that element of damage  
12 and allow compensation?

13 A Yes.

14 Q There's a permanent injury line, cause of -- for permanent  
15 injury for the fact that you will suffer with this for the  
16 rest of your life on permanent injury. Are you asking the  
17 jury to consider that and award those damages?

18 A (Nods head.)

19 Q Loss of enjoyment of life has the elements before, from  
20 the date of the injury up to today, and then it has from today  
21 and the future. Are you asking them to award both of those?

22 A Yes.

23 Q Okay. Do you have an idea about what you want?

24 A Whatever you think is fair.

25 Q What's been the worst part, Ms. Corley?

1 A Life, my life. November the 7th, 2011, my life changed.  
2 I have no life, just pain.

3 MR. MCELHANEY: May I have one moment, your Honor?

4 THE COURT: Yeah.

5 (Brief Pause.)

6 MR. MCELHANEY: Ms. Corley, thank you. Mr. Rowlett  
7 will have some questions. Are you okay? Do you need a break  
8 before that?

9 THE WITNESS: I'm okay.

10 MR. MCELHANEY: Okay.

11 CROSS-EXAMINATION

12 BY MR. ROWLETT:

13 Q Ms. Corley, you just said you're okay to keep testifying.  
14 But if that changes at any time, will you tell us?

15 A Yes.

16 Q And if you need to stand up or anything, that's still  
17 fine. Okay?

18 A Okay.

19 Q All right. Now, Ms. Corley, you slipped on water; right?

20 A Yes.

21 Q And you don't know where that water came from; right?

22 A Correct.

23 Q And you don't know how long it was on the floor; correct?

24 A Correct.

25 Q And we saw in the video was that a -- did that video

1 appear --

2           Your Honor, I'm going to move back here and work from  
3 here if that's okay.

4           Did that video appear to be an accurate video of what  
5 you did that day?

6 A    Yes.

7 Q    Did it appear to have been altered in any way?

8 A    No; not to my -- I don't know.

9 Q    Is it consistent with your recollection?

10 A   Yes.

11 Q   And you had a buggy with you that day; is that right?

12 A   Yes.

13 Q   And you were pushing it, and your son was with you?

14 A   Yes.

15 Q   And you'd gone to the store to get Miracle Whip; is that  
16 right?

17 A   Yes.

18 Q   And that was the only thing you planned to get there that  
19 day?

20 A   At Wal-Mart I never know what I'm going to get, at  
21 Wal-Mart. That's why I went.

22 Q   You went to -- you went why?

23 A   To get the Miracle Whip.

24 Q   All right. Why did you get a buggy if you were just going  
25 to get Miracle Whip?



1 A Wal-Mart is a one-stop shop. I don't ever -- you never  
2 know what else you're going to get. I go down different  
3 aisles. Just because I'm going to get Miracle Whip I  
4 always -- I go to different aisles, the sale aisle, the  
5 clearance aisle. It's just a habit.

6 Q So you brought a buggy just in case; is that right?

7 A Yes.

8 Q And then you parked the buggy at the beginning of the  
9 aisle; right?

10 A Yes.

11 Q Why did you stop the buggy there at the beginning of the  
12 aisle?

13 A To go down the aisle to get the Miracle Whip.

14 Q Why did you take the buggy with you?

15 A I just -- I just stopped right there. I was going to pick  
16 up Miracle Whip.

17 Q It wasn't because there was anybody in the aisle in front  
18 of you?

19 A No. I didn't see anyone in the aisle.

20 Q Was anybody in the aisle at all while you were in the  
21 aisle that day?

22 A I didn't see anybody visible in the aisle.

23 Q Do you know whether the water was present on the floor  
24 when you walked with your buggy up and parked it?

25 A I don't know.

1 Q Might have been there; might not have been there. All  
2 right.

3 Your Honor, I would ask assistance in showing this on  
4 the screen, the video already entered into evidence.

5 Now, Ms. Corley, can you see that screen okay or  
6 could we dim the lights a little maybe?

7 All right. Now, Ms. Corley, do you see yourself in  
8 that shot?

9 A Yes.

10 Q And have you seen this video before?

11 A Yes.

12 Q Have you seen it more than once?

13 A Yes.

14 Q And that's you with your son. And I'm going to play a  
15 little bit.

16 (Whereupon, a video was played.)

17 BY MR. ROWLETT:

18 Q You're walking up toward where you slipped; is that right?

19 A Yes.

20 Q All right. And I've paused it at 3:39:20, and it's your  
21 testimony that you don't know whether the water was on the  
22 floor at that time; right?

23 A Correct.

24 Q And you were going to go to the right down there because  
25 the Miracle Whip was just down the aisle a ways; right?

1 A It was down the aisle, yes.

2 Q Would it be accurate to say it was about halfway down the  
3 aisle?

4 A I don't recall exactly how far, but it was down the aisle.

5 Q What's your best estimate of how far down the aisle it  
6 was?

7 A Maybe a little under midways. I'm not accurate because I  
8 don't exactly remember exact where the Miracle Whip was. It  
9 was on the aisle.

10 Q Several feet down there?

11 A Yes.

12 Q And does it look like from the video that you were  
13 generally right where you were just a minute ago, the same  
14 location where you slipped; is that right?

15 A No. It looked like I was on the right side when I walked  
16 in.

17 Q Okay. So you took your buggy up, and you parked it;  
18 correct?

19 A Yes.

20 Q And then you turned to the right and went down the aisle;  
21 correct?

22 A Yes.

23 Q And you came back and walked right to your buggy, and  
24 that's when you slipped; right?

25 A Yes.

1 Q So if the water had been there when you put your buggy in  
2 the stopped position, and you would have stepped in the water;  
3 right?

4 A I don't know. I can't say I would have stepped in the  
5 water. If I'm walking, I don't know where the water exactly  
6 was.

7 Q Well, you saw the water after you slipped; right?

8 A Yes.

9 Q You didn't see it before; right?

10 A Correct.

11 Q And you described it as being about the size of a plate;  
12 right?

13 A Yes.

14 Q And you looked down, and you saw that you had stepped in  
15 it and slipped; right?

16 A Yes.

17 Q And you saw where the water was; right?

18 A Yes.

19 Q And it was right next to your buggy where we see on the  
20 video; right?

21 A Right in front of the buggy.

22 Q Right. Okay. I'm going to play a little bit more and  
23 because I've got to ask you a follow up question about it.

24 Would you mind watching with us a little bit more here,

25 Ms. Corley?

1 (Whereupon, a video was played.)

2 BY MR. ROWLETT:

3 Q And this is again at 3:39:20. And you've just turned to  
4 your right to go down the aisle; correct?

5 A Yes.

6 Q All right. Was that your son starting to go down the  
7 aisle with you?

8 A Yes.

9 Q Okay. I'm going to back it up just a little bit and play  
10 that again, Ms. Corley, because I want to ask you about it.  
11 Okay?

12 (Whereupon, a video was played.)

13 BY MR. ROWLETT:

14 Q Do you know whether your son stepped in any water before  
15 you did?

16 A No, I don't. He didn't -- if he would have stepped in it,  
17 it wasn't my recollection.

18 Q You don't remember him saying anything to you about it?

19 A No.

20 Q All right. We're at 3:39:22. I'm going to play a little  
21 bit more. Okay, Ms. Corley?

22 (Whereupon, a video was played.)

23 BY MR. ROWLETT:

24 Q I'm pausing it at 3:39:34, Ms. Corley. Do you know what  
25 you were doing around that time?

1 A I went in the aisle to get Miracle Whip. I could have  
2 been -- I don't know what I was doing, looking on the shelf.

3 Q Do you remember?

4 A No.

5 Q I'm going to play a little bit more.

6 (Whereupon, a video was played.)

7 BY MR. ROWLETT:

8 Q Now I'm going to pause it right here at 3:39:37. Do you  
9 see the lady in the green shirt with the ponytail right near  
10 your cart? I'll play a little bit more, and then you tell me.  
11 And I'll pause it and ask you about whether you see the lady  
12 in green.

13 (Whereupon, a video was played.)

14 BY MR. ROWLETT:

15 Q Did you see her flip her hair right there where you can  
16 see the ponytail?

17 A Yes.

18 Q All right. So would you agree it appears there's a lady  
19 with a green shirt on and a ponytail right near where your  
20 cart is?

21 A Yes.

22 Q All right. I'm going to play a little bit more,  
23 Ms. Corley.

24 (Whereupon, a video was played.)

25 BY MR. ROWLETT:

1 Q You can see her ponytail again there right at 3:39:45.

2 She walks just right where you slipped, didn't she?

3 A I don't know. She walked right where I slipped, but she's  
4 in the aisle.

5 Q She's right close to it, isn't she?

6 A I can't tell how far away she is.

7 Q Okay. And she goes down your aisle; right?

8 A Yes.

9 Q Because we can see it on the video; right? I'm going to  
10 play a little bit more here.

11 (Whereupon, a video was played.)

12 BY MR. ROWLETT:

13 Q All right. Now I'm going to pause it at 3:39:47. You're  
14 not back to your cart yet; right?

15 A Correct.

16 Q Now, do you remember when you walked in that aisle,  
17 whether you stayed in that aisle?

18 A Yes.

19 Q You don't remember going outside the aisle?

20 A No, I do not.

21 Q Okay. So would it be fair to say when you said you didn't  
22 remember anybody else being on that aisle at the same time,  
23 the video shows that that lady with the ponytail was on the  
24 aisle at the same time as you were?

25 A I didn't visually see the woman in the aisle.

1 Q But wouldn't you agree the video shows that the woman was  
2 on the aisle at the same time you were?

3 A Yes.

4 Q Okay. All right. I'm going to press play again and go a  
5 little bit farther here.

6 (Whereupon, a video was played.)

7 BY MR. ROWLETT:

8 Q All right. It's 3:40:02. You're not back yet; right?

9 A Correct.

10 Q Okay. You think you just went to grab the Miracle Whip in  
11 the right container and come right back or do you think maybe  
12 you were doing some other shopping when you were down that  
13 aisle or you just don't remember?

14 A I don't remember. I was getting the Miracle Whip.

15 Q Okay. We'll play some more here.

16 (Whereupon, a video was played.)

17 BY MR. ROWLETT:

18 Q All right. 3:40:09 is when you come back; right?

19 A Yes.

20 Q And you came right back to your cart where you parked it;  
21 right?

22 A Yes.

23 Q And your cart hadn't moved when you were away from it;  
24 right?

25 A Correct.



1 Q And you pushed your cart up with your hands on the handle;  
2 right?

3 A Yes.

4 Q And then you moved down the aisle and came back to again  
5 get in the same position with your cart; right?

6 A Yes.

7 Q You normally push a buggy about the same way, kind of  
8 grabbing the handlebar, the handle, and pushing it?

9 A Yes.

10 (Whereupon, a video was played.)

11 BY MR. ROWLETT:

12 Q Okay. Now, 3:40:11, that's when you slip; right?

13 A Yes.

14 Q So there's definitely water on the floor at that time;  
15 right?

16 A Yes.

17 Q Did you see where the water came from?

18 A No.

19 Q And have you tried to think about that since you got --  
20 well, since you filed this lawsuit for sure. But you've seen  
21 the evidence and tried to figure out where the water came  
22 from; right?

23 A I don't know where it came from.

24 Q Well, you've considered that; right?

25 A Yes. I don't know where it came from.

1 Q Okay. I mean, you don't think anybody from Wal-Mart put  
2 it there on purpose; right? We're not here about that.

3 A I don't know where the water came from.

4 Q You don't have any reason to believe anybody from Wal-Mart  
5 put it there on purpose; right?

6 A I don't know where the water came from.

7 Q Okay. I'm going to play some more here, Ms. Corley.

8 (Whereupon, a video was played.)

9 BY MR. ROWLETT:

10 Q Now, what's your son doing right there, right at 3:40 --  
11 right before 3:40:20?

12 A He's wiping his foot in the water.

13 Q Kind of kicking it?

14 A No; like wiping it.

15 Q Wiping it, okay. Now, did you watch the video and see  
16 where the folks from Wal-Mart were when they cleaned up this  
17 water after?

18 A Yes.

19 Q And did you see, I believe the lady's name is Kadisha, go  
20 down that aisle a little bit as she was cleaning? Do you  
21 remember that or not?

22 A No. I don't remember that.

23 Q I'm going to play it forward.

24 (Whereupon, a video was played.)

25 BY MR. ROWLETT:

1 Q I'm going to jump forward just a little bit, Ms. Corley.  
2 Okay? Actually, I think I'm going to have to switch shots  
3 because this is the before versus the after.

4 (Whereupon, a video was played.)

5 BY MR. ROWLETT:

6 Q All right, Ms. Corley. We're up at about 3:41:43. And do  
7 you see Ms. Smith there guarding the spill?

8 A Yes.

9 Q Do you see now another, what you understand from the  
10 testimony, to be another Wal-Mart employee come up; is that  
11 right?

12 A Yes.

13 Q All right. Ms. Corley, at 3:42:57 does it appear to you  
14 that one of the Wal-Mart employees is cleaning up the water?

15 A Yes.

16 Q Okay. I'll let you watch that a little bit more.

17 (Whereupon, a video was played.)

18 BY MR. ROWLETT:

19 Q Can you tell at 3:43:17 that one of the Wal-Mart  
20 associates has gotten some paper towels to go wipe some?

21 A Yes.

22 (Whereupon, a video was played.)

23 BY MR. ROWLETT:

24 Q All right. At 3:43:41 do you see how the Wal-Mart  
25 employee has gone down into the aisle where you can't really

1 see her while she's cleaning?

2 MR. MCELHANEY: Your Honor, I object to that  
3 speculation, what she's doing, counsel's commentary.

4 THE COURT: Sustained.

5 BY MR. ROWLETT:

6 Q Did you see the Wal-Mart associate cleaning right before  
7 she went out of view?

8 A Yes.

9 Q And did you see her go down the aisle toward the direction  
10 where you got the Miracle Whip?

11 A Yes.

12 (Whereupon, a video was played.)

13 BY MR. ROWLETT:

14 Q All right. Ms. Corley, do you see at 3:43:53 the employee  
15 has come back out of the aisle cleaning as he came out --  
16 where she came out; is that right?

17 A I see a guy at the end of the endcap.

18 Q Okay. Can you tell, based on the earlier testimony, you  
19 can see the person doing something to the floor?

20 A Yes.

21 Q All right. So, Ms. Corley, you did see the lady with the  
22 ponytail go down the aisle after you went down there; right?

23 A No. I didn't visually see her.

24 Q Pardon me. On the video?

25 A Yes.

1 Q Okay. And you don't know if perhaps she might have  
2 spilled the water; right?

3 A I don't know how the water got there.

4 Q Okay. Which side -- if you're going down the aisle, you  
5 took a right, and went down the aisle, which side was the  
6 dressing, Miracle Whip on, your right or your left?

7 A I think the left.

8 Q I'm sorry?

9 A On the left.

10 Q All right. I may come back to this, your Honor, but I was  
11 just going to put that -- reduce that for the moment.

12 So did you know that liquid was water?

13 A Yes. It was water.

14 Q You could tell; right?

15 A Yes.

16 Q And you don't recall seeing any dirt or footprints in it;  
17 right?

18 A I don't -- wasn't visualizing trying to look for  
19 footprints. I just looked down where I was, where I slipped.

20 Q Okay. Looking at the video earlier, did you see whether  
21 anything was in your cart at the time you walked up there?

22 A I couldn't tell.

23 Q Do you recall whether anything was in your cart at the  
24 time you walked over there?

25 A I'm not sure if anything was in it.

1 Q You just don't recall?

2 A I don't remember what was in it, if anything was in it.

3 Q Approximately how long had you been in the store before  
4 you slipped?

5 A Maybe about 30 minutes. I picked my son up at 3:00.

6 Q Do you think you were doing shopping during that 30  
7 minutes?

8 A We were looking around.

9 Q Don't remember whether you picked up anything or not?

10 A I can't remember.

11 Q So is it possible that there was water in your cart?

12 A No.

13 Q How do you know?

14 A I wouldn't have gotten a cart with water in it, water on  
15 it. I'm in the store. If they have carts there, I'm not  
16 going to get a wet cart.

17 Q No, ma'am. Would you have possibly purchased any kind of  
18 container with water?

19 A No. I didn't have any water.

20 Q Do you know what else was in the cart?

21 A No, I don't. But I know it wasn't water, didn't have any  
22 water.

23 Q And your position is that this accident was Wal-Mart's  
24 fault; right?

25 A Yes.

1 Q And explain why that is to the jury, please.

2 A I went in a store that I thought was safe, walked in,  
3 limped out.

4 Q Are you done, ma'am?

5 A Yes.

6 Q Do you need a break?

7 A No.

8 Q Are you sure?

9 A Yes.

10 Q Okay. Did you see Ms. Smith walk by the aisle after you  
11 went down it?

12 A On the video, yes.

13 Q Okay. Do you know whether the water was on the floor at  
14 the time she walked by?

15 A I don't know how the water got there or how long it was  
16 there.

17 Q Now, after you hurt your knee, did you purchase the goods?

18 A Yes.

19 Q You don't remember what that was?

20 A No.

21 Q And then did you have to pick somebody else's kid up from  
22 the bus afterwards too?

23 A Well, my friend had asked me if I would pick her son up,  
24 and she was in the hospital.

25 Q And so you picked up her son on the way home?

1 A Yes.

2 Q Had you ever had any experience like this with that pop?

3 A No.

4 Q Did I hear you correctly earlier say that since then, you  
5 had a situation where you were going up the stairs, and you  
6 felt your knee pop?

7 A Yes.

8 Q When was that, Ms. Corley?

9 A It was after my -- after my first surgery. It's been  
10 since my injury.

11 Q It was before your second surgery?

12 A I can't remember the exact date because my knee pops all  
13 the time and --

14 Q When it -- has it popped all the time since the accident  
15 at Wal-Mart?

16 A Since the injury.

17 Q Well, you mentioned at one time on your direct testimony  
18 about a popping as you were going up the stairs. Do you  
19 remember that?

20 A Yes.

21 Q Okay. And you said that when you were at the Wal-Mart,  
22 that it felt like it popped; right?

23 A Yes.

24 Q And then I believe you said that it hurt -- was it an  
25 eight and a half out of ten after the accident?



1 A About an eight and a half.

2 Q So it hurt a lot after the accident?

3 A Yes.

4 MR. ROWLETT: Okay. Your Honor, may I approach for  
5 the exhibits, please?

6 THE COURT: Yes.

7 BY MR. ROWLETT:

8 Q And, Ms. Corley, do you remember filling out a witness  
9 statement after the accident?

10 A Yes.

11 Q Was that in your own handwriting?

12 A Yes.

13 Q And did they tell you what to say in it?

14 A No.

15 Q Did they just ask you to describe what happened?

16 A Yes.

17 Q And did they alter it after the accident?

18 A I don't understand what you're saying.

19 Q Well, you saw it earlier, I guess, the Exhibit 5 that you  
20 all have -- your lawyer has introduced into evidence.

21 May I pass that up, your Honor?

22 THE COURT: Yeah.

23 BY MR. ROWLETT:

24 Q This is Plaintiff's Exhibit 5. Is that the statement that  
25 you wrote out, Ms. Corley?

1 A Yes.

2 Q What did you write down at the bottom about how your knee  
3 felt after the accident?

4 A It's aching from the pop.

5 Q Okay. Has your knee hurt constantly since the accident?

6 A Yes. It's always hurting.

7 Q It's always hurting?

8 A Take a pill, pain medicine, and it's gotten a little --  
9 after surgery, it got better, a little temporary, but I'm  
10 always hurting.

11 Q Okay. Now, when you've gone to see Dr. Dube, he's -- he  
12 and his people have asked you how your knee felt; is that  
13 right?

14 A Yes.

15 Q And have you seen any of the records that they generated  
16 after your visits?

17 A No. I only saw what was on the screen.

18 Q Were there ever times when you went in there that you were  
19 not having distress or did you always have distress when you  
20 went into Dr. Dube's office?

21 A No. I would have -- temporarily it would feel a little  
22 better, but the pain never just gone away one hundred percent.

23 Q So you've always been in pain every time you've gone in to  
24 see Dr. Dube?

25 A Yeah. It may have been a time I went and I was feeling a

1 little better.

2 Q All right. If there are any entries in the records that  
3 your lawyers have made an exhibit in this trial that describe  
4 you as not being in any significant distress, would that sound  
5 accurate to you?

6 A I don't understand what you're saying.

7 Q Let me ask a different question. If a record shows that  
8 you denied having any pain while you were in Dr. Dube's  
9 office, did that sound right to you?

10 A Yeah. If I was feeling a little better -- if I'm feeling  
11 a little better, I'm going to say I'm feeling a little better.  
12 I won't say I'm hurting if I'm not.

13 Q Would you have denied having any pain?

14 A Not if I'm having pain I won't deny it.

15 Q And you've had pain since the accident, just it's been not  
16 as bad sometimes?

17 A On a -- yeah. I may have a good day where if I take a  
18 pain pill, I'm not going to feel the pain.

19 Q What kind of pain pills are you taking?

20 A Right now they have me on Oxycodone and Motrin.

21 Q How long have you been taking Oxycodone?

22 A I went to pain management. I've been there a little over  
23 a month.

24 Q So you only just started that?

25 A Yes.

1 Q Did every time you talked to Dr. Dube before you had one  
2 of these scopes, you talked about whether to do it or not with  
3 him; is that right?

4 A Yes.

5 Q And did you discuss the possibility of a total knee  
6 replacement?

7 A We talked about me having to have a knee replacement in a  
8 couple of years.

9 Q But your knee is really hurting you right now?

10 A Yes.

11 Q Have you asked him about the possibility of having one  
12 maybe after the first surgery instead of having multiple  
13 scopes?

14 A I didn't know I was going to have to have multiple scopes.  
15 I'm not a doctor.

16 Q Have the scopes helped your knee do you think?

17 A Temporarily.

18 Q Who's your primary care physician?

19 A Clarissa Arthur.

20 Q How long have you seen Dr. Arthur?

21 A For a couple of years now.

22 Q Do you remember who your primary care physician was at the  
23 time of the accident?

24 A Hope Family Medical Center.

25 Q And how long had you been seeing them?

1 A A couple of years. I want to say a couple of years, a  
2 year. I can't recall the exact time.

3 Q Do you remember the office of your primary care physician  
4 that you were seeing during the couple of years before the  
5 accident?

6 A No. I didn't have insurance, so I didn't have a primary  
7 care physician.

8 Q Were you going to any primary care physician during that  
9 time?

10 A No. I would only go to the doctor if I was hurting real  
11 bad and just go to the emergency room.

12 Q But you saw Dr. Mohyuddin (phonetic); is that right?

13 A Dr. Mohyuddin.

14 Q Pardon?

15 A Dr. Mohyuddin.

16 Q Mohyuddin. Okay. All right. And you said that your knee  
17 popped in this accident; right?

18 A Yes.

19 Q And you said it's popped since the accident?

20 MR. MCELHANEY: Your Honor, it's repetitious, already  
21 covered it. Object.

22 THE COURT: Overruled.

23 BY MR. ROWLETT:

24 Q And so have the pops since the accident been -- any of  
25 them been similar to the pop during which you injured your

1 knee at Wal-Mart?

2 A It's popped. I can't say if it's -- it popped.

3 Q Have any of them felt the same as the one where your knee  
4 hurt at Wal-Mart?

5 A Yes.

6 Q Have they hurt after it popped?

7 A Yeah. After it popped it hurt bad.

8 Q So the Wal-Mart slip was not the only time your knee hurt  
9 after it popped. It hurts after the pops since then; is that  
10 right?

11 A If I'm walking and it popped, it hurts.

12 Q And when you were walking at the Wal-Mart and it popped,  
13 it hurt; right?

14 A After I slipped and twist and pop, yes, it hurt.

15 Q Right. So how would you compare those pops that have  
16 occurred since then to the pop that occurred at the Wal-Mart?

17 A All the pops are painful.

18 MR. ROWLETT: Give me just a moment, your Honor.

19 (Brief Pause.)

20 MR. ROWLETT: That's all I've got, your Honor.

21 THE COURT: All right.

22 MR. MCELHANEY: May we get the exhibit back from the  
23 witness so we can have them all back together, please.

24 REDIRECT EXAMINATION

25 BY MR. MCELHANEY:

1 Q Ms. Corley, I may have just a few questions. Okay? Are  
2 you okay?

3 A (Nods head.)

4 Q Mr. Rowlett asked you if you had been able to see the  
5 video surveillance footage that Wal-Mart provided to us when  
6 we asked for it. Do you remember that question?

7 A Yes.

8 Q Have you ever been -- had a chance to see the video  
9 footage that existed before the hour before your injury?

10 A No.

11 Q Did you or anybody on your behalf get to go to Wal-Mart  
12 and look at all of the footage?

13 A No.

14 Q So what of the video you've is just what Wal-Mart gave us;  
15 right?

16 A Yes.

17 Q Now, you were here yesterday when we heard Mr. Hicks talk  
18 about the lady with the red shirt; right?

19 A Yes.

20 Q And now Mr. Rowlett is asking you about the lady with the  
21 ponytail?

22 A Yes.

23 Q Okay. Did -- when you came out of that -- when you were  
24 in that aisle, did you ever see or hear anything that led you  
25 to think that water had hit the ground from a break or

1 somebody dropping something?

2 A No.

3 Q And Joshua, did he cause the water to be on the floor?

4 A No.

5 Q Did he have anything with him that would have done that?

6 A No.

7 Q Did you cause the water to be on the floor?

8 A No.

9 Q Did you have anything in your buggy that had water in it?

10 A No.

11 Q What do you shop for that would have water in it besides  
12 like a bottle of water or a jug of water?

13 A That's the only thing that would have water in it that I  
14 shop for.

15 Q Do you remember picking up any Water bottles that day or  
16 jugs of water?

17 A No.

18 Q During your treatment with Dr. Dube, Mr. Rowlett was  
19 asking you about pain medicine. And you're on Oxycodone now?

20 A Yes.

21 Q And you take -- what's the prescription for that?

22 A Oxycodone 7.5, two a day along with Motrin.

23 Q When do you take them, two a day?

24 A I take one in the morning and maybe late evening.

25 Q From time to time did Dr. Dube also give you pain



1 medicine?

2 A Yes.

3 Q So you've been on pain medicine for three years?

4 A Yes.

5 Q Mr. Rowlett asked you what Wal-Mart did, what you blame  
6 Wal-Mart for. Should Katrina Smith have cleaned up the water  
7 when she walked by?

8 A Yes.

9 Q And all those other employees that were in the area,  
10 should they have done something?

11 A Yes.

12 Q Should Wal-Mart just leave water laying on the floor?

13 A They shouldn't.

14 Q Had you had any training on how to look for or clean up  
15 water in a retail store?

16 A No.

17 MR. MCELHANEY: Thank you, ma'am.

18 THE COURT: All right. Thank you, ma'am. You can  
19 step down. Let's take a 15-minute break.

20 (Whereupon, the jurors exited the courtroom.)

21 THE COURT: All right. See y'all in a few minutes.

22 COURTROOM DEPUTY: All rise, please.

23 (Brief recess.)

24 COURTROOM DEPUTY: All rise, please.

25 THE COURT: All right. Thanks. Y'all can be seated.

1 Anything we need to talk about? All right. Let's bring the  
2 jury back.

3 (Whereupon, the jurors entered the courtroom.)

4 THE COURT: All right. Thanks. Y'all can be seated.  
5 Are you ready to call your next witness?

6 MS. HAGH: Yes, your Honor. Before we call our last  
7 and final witness, actually, we'd like to announce to the  
8 Court that the parties have stipulated to Ms. Corley's life  
9 expectancy of 35 years based on the relevant mortality tables.

10 THE COURT: Okay.

11 MS. HAGH: And we'd ask the court to instruct the  
12 jury and to accept the stipulation as fact.

13 THE COURT: Okay. All right.

14 MS. HAGH: Our final witness, your Honor, is  
15 Ms. Montesha Corley.

16 THE COURT: Okay. Ms. Corley, if you'll come forward  
17 up here and when you get up to the front, raise your right  
18 hand to be sworn in, right here.

19 COURTROOM DEPUTY: Raise your right hand, please.

20 MONTESHA LECHHEL CORLEY,  
21 herein, having been first duly sworn, was examined  
22 and testified as follows:

23 COURTROOM DEPUTY: State your full name for the  
24 record, please, and spell your last.

25 THE WITNESS: Montesha Lechel Corley, C-o-r-l-e-y.

## DIRECT EXAMINATION

1  
2 BY MS. HAGH:

3 Q Montesha, you are Ms. Corley's daughter; correct?

4 A Yes, ma'am.

5 Q And how old are you?

6 A 23.

7 Q And are you currently in school anywhere?

8 A Yes. I'm at Tennessee Technology center for cosmetology.

9 Q And when do you expect to graduate?

10 A I expect to graduate next year around this time, maybe  
11 September.

12 Q And you currently live with your mom; is that correct?

13 A Yes.

14 Q And who else lives there with you?

15 A I have a younger brother, and my daughter lives there as  
16 well.

17 Q And have you lived with your mom most of your life?

18 A Yes.

19 Q As well as your older brother?

20 A Yes, ma'am.

21 Q And how old is your brother, older brother?

22 A My older brother?

23 Q Yes.

24 A He's 26.

25 Q Okay. And your mom was a single parent; correct?

1 A Yes, ma'am.

2 Q Okay. And what was your childhood and teenage years like?

3 A We've always been very, very close, and I was very active.  
4 I started dancing when I was seven, and I also started  
5 cheerleading when I was nine. So she was always around, and I  
6 cheered for multiple teams, sometimes three different  
7 organizations, along with dancing. And she was like a cheer  
8 mom, so she never missed a game, never missed a competition.  
9 She made water bottles, T-shirts, designed bags. She done  
10 that -- actually, I stopped cheerleading at 18, and she was  
11 there the entire time.

12 And at my games she would come -- and it was this one  
13 incident where I guess we got snowed in at the game, and she  
14 actually carpooled some of my cheer mates and had another  
15 parent follow to my house. And we all just went to my house,  
16 and we slept in her bed too. And it was like over 14 girls,  
17 but she's always been there through everything, competitions,  
18 dance, cheerleading, every game, homecomings. And I was at  
19 homecoming like for four years, and she was always there,  
20 right there in the front.

21 Q So she was very involved in your life?

22 A Yes.

23 Q And did you go to school here in the Nashville area?

24 A Yes.

25 Q Where did you go to school?

1 A High school?

2 Q Yes.

3 A McGavock Comprehensive High School.

4 Q And what year did you graduate high school?

5 A 2009.

6 Q Okay. And how old were you when your mom took in Joshua,  
7 your youngest brother?

8 A I was 13. Yes, I was 13.

9 Q What was the dynamic like when he became a sibling and  
10 third addition to your family?

11 A It was -- we loved it. We hadn't had babies in our family  
12 for a while, so he became the baby. And we loved it. We  
13 couldn't have asked for a baby at a better time.

14 Q And did your mom raise him by herself as well?

15 A Yes, ma'am.

16 Q Did you help her any when you were a teenager?

17 A Yes, ma'am.

18 Q Okay. And you have a daughter yourself now; correct?

19 A Yes, ma'am.

20 Q And how old is she?

21 A She's three.

22 Q When was she born?

23 A She was born October 10th, 2011.

24 Q Okay. So just weeks before your mother's incident at  
25 Wal-Mart your daughter was born?

1 A Yes.

2 Q Did your mom help you any in those first three weeks of  
3 Carmen's life?

4 A Yes. She helped me a lot. Actually, I had a Cesarean  
5 section, so I needed a lot of help. And she would come get  
6 her in the middle of the night. I mean, I breast fed as well,  
7 but she was right there helping me. She would keep her  
8 basically almost the whole night until it's time to be fed,  
9 and she would bring her in there. And she would help with her  
10 baths, everything.

11 Q Changing?

12 A Changing.

13 Q Feeding?

14 A Feeding. I had trouble with the breastfeeding, but she  
15 actually helped me with the breastfeeding as well. And when I  
16 needed rest, even during the day if she had her at night, she  
17 would still help me during the day when I needed rest as well.

18 Q How would you describe your mom prior to this injury?

19 A She was very active, always on the go, had lots of energy,  
20 just exciting, very fun.

21 Q And you've talked about some of the things she did with  
22 you while you were involved in cheer and dance. What are some  
23 things that you did as a family with your two brothers and  
24 your mom?

25 A We would go to amusement parks, Beech Bend in Kentucky,

1 and we always did that like every year, maybe sometimes twice  
2 a year. And we would go to Family Fun Center, Laser Tag.  
3 Yeah, she would be there running around too.

4 Me and my mom, we would go get our nails done, toes  
5 done. We would dance by ourselves too, play like WII games or  
6 any type of Play Station games. So we would dance and play  
7 rock band. And with my older brother and my younger brother,  
8 we would go to the movies, just everything actually outside  
9 the house.

10 Q And when you guys would go to amusement parks or different  
11 places, was your mom able to be on her feet all day?

12 A Oh, yes.

13 Q Was she able to ride any of rides?

14 A Yes. She would ride the rides with us, and she's mainly  
15 the one with the energy. I would be the one who's tired and  
16 ready to go home. But, yeah, she would.

17 Q Did she ever have any problems getting around?

18 A No; not at all.

19 Q Did she ever complain of knee pain?

20 A No; not at all.

21 Q Did she ever complain of right knee pain?

22 A No.

23 Q How has that changed since her injury at Wal-Mart?

24 A She really don't leave the house much. She kind of just  
25 stay in bed a lot or she'll sit on the couch.

1 Q Take your time.

2 A I'm sorry. She kind of just -- we don't really leave the  
3 house too much. She kind of just lay around. Sometimes she  
4 would kind of try to get up and cook, but she doesn't really  
5 have the energy anymore. And she's kind of always just in  
6 pain. It's just a drastic change.

7 Q And I can see and understand it's difficult for you to  
8 talk about. But how has that affected, you know, your home  
9 life and Joshua's home life?

10 A He wants to start sports, but it's kind of hard getting  
11 around now. So, of course, she wants to be there to take him  
12 and to be at every game, but it's kind of hard. I have to  
13 help out with school, taking him to school sometimes, and  
14 picking him up along with my daughter. My mom was usually the  
15 one who watches my daughter, but I have to take her to my  
16 grandma's now, which is out east Nashville. We live in  
17 Antioch.

18 So sometimes I would wake up and take my brother to  
19 school and then take my daughter to my grandma's, then drive  
20 back to school -- well, drive to school, then back to my  
21 grandma's if she doesn't spend the night, and then go home.  
22 But sometimes she's tired, so I would have to miss class,  
23 which is -- I understand because some days she needs to take  
24 her medicine, like she's in pain. So I would just kind of  
25 take my brother to school and keep my daughter, and I would



1 pick my brother up just so she don't have to leave the house  
2 so she can just rest and get some of the rest that she needs.

3 Q Other than helping take Joshua to and from school, what  
4 other things have you done to help your mom these last three  
5 years?

6 A I've grocery shopped. I'm not the best shopper, but I  
7 try. I grocery shop. I help around the house, cleaning, help  
8 her with laundry. She's a very clean person. Like she likes  
9 things done her way. But I try my best to clean as good as  
10 she wants -- and she's fine with it -- and just anything that  
11 she needs. Because she likes making things, so I would go out  
12 and pick up some -- go to Hobby Lobby, pick up some material,  
13 shirts, and she would do it if she feels like it. But she  
14 doesn't really have the energy, so I would just go out and get  
15 some extra things that she needs for the house.

16 Q Now, was your mom able to do all the cooking and cleaning  
17 prior to her injury?

18 A Yes. She did mainly -- well, she did all the cooking and  
19 the cleaning. We cleaned up as well, but she did everything.

20 Q And would she always be responsible for taking Joshua to  
21 and from school?

22 A Yes.

23 Q And she'd watch Carmen for you every day?

24 A Yes.

25 Q Now, your mom's first surgery was two days before

1 Christmas. Do you remember that?

2 A I do.

3 Q Tell me what that Christmas was like for you in your  
4 house.

5 A Okay. Well, that Christmas I remember she was on the  
6 couch. We had a tree here and right here, and our tree was  
7 here and she had her leg -- she was laying on the couch, and  
8 she was just kind of propped up. She had her medicine then  
9 but she wasn't -- well, she just wasn't feeling too good, so  
10 you couldn't tell the excitement she wanted to be. But you  
11 could just see how much pain she was in. So I had to help the  
12 kids with her gifts in building things like the bikes and put  
13 together doll houses because I have a niece as well.

14 So every Christmas she would wake up, and she would  
15 make a big breakfast like eggs, bacon, sausage, pancakes,  
16 biscuits. She would make a breakfast every Christmas morning.  
17 So she wasn't able to do that, and I put up the Christmas  
18 tree. And on that Christmas day we opened up gifts maybe  
19 around 6:00 o'clock, and she is right there usually. The  
20 Christmas prior, before the injury, she would be there to take  
21 the trash of the gift wraps, and she would clean as we go. So  
22 that's what I was doing. I was trying to like keep our house  
23 clean because I know how she is.

24 So I was there with the kids passing them their  
25 gifts. She usually does that, but she wasn't feeling well.

1 She basically laid there the whole Christmas because she just  
2 didn't feel good at all. So I was trying to be her actually  
3 by cleaning and passing out the kids' gifts and setting up the  
4 night before. So she just wasn't herself at all.

5 Q And so your mom would usually do all the Christmas  
6 shopping --

7 A Yeah.

8 Q -- for all the kids, for her grandkids. She would wake up  
9 and cook that day usually?

10 A Yes.

11 Q But she wasn't able to that year?

12 A No.

13 Q Was she able to the following year?

14 A Not really; more than she could the previous year. But  
15 the following year I still put up the tree, took down the  
16 tree, helped with the gifts. She wasn't able to shop as well.

17 Q And before she could put up the Christmas tree by herself?

18 A Yes; Christmas tree, Christmas lights around the windows,  
19 a wreath on the door.

20 Q She could hang all the ornaments?

21 A Yes.

22 Q Take the tree apart. Did you guys have a real tree or a  
23 fake tree?

24 A We would have a fake free.

25 Q So she could put it together, take it down, put it in a

1 box?

2 A Yes.

3 Q Where do you guys normally store your tree?

4 A We had a storage room on our balcony.

5 Q Was your mom able to take the tree and put it up by  
6 herself?

7 A No. She hasn't been able to do that for the past three  
8 years.

9 Q She could do that before?

10 A Yes.

11 Q Okay. What role have you played in -- and you've talked  
12 about this a little, but during the time that your mom, these  
13 three years, your mom has had three different surgeries on her  
14 knee -- what role have you played in her medical treatment, if  
15 anything?

16 A I took her to her last two surgeries. I took her to  
17 her -- I can't think of what it's called after her --

18 Q You'd take her to physical therapy?

19 A Yes. I would take her to her physical therapy  
20 appointments. It would actually be me and my daughter. I  
21 would bring her along, as I didn't have anyone else to watch  
22 her. But I would take her there every time, go pick up her  
23 prescriptions.

24 Q Would you and your daughter actually go into the doctor's  
25 office?

1 A No. We would go and run some errands if she needed  
2 anything while she was in there, and then we would sometimes  
3 wait in the car because I didn't want to bring a baby into the  
4 doctor's office with her whining or anything like that. But  
5 we would wait in the car if we wouldn't run errands, and then  
6 we would go back and pull up and pick her up.

7 Q What's the biggest change you've seen in your mom,  
8 Montesha, since her injury at Wal-Mart?

9 A Her lack of energy and just all around. She's usually a  
10 very excited, energetic, outgoing person, like never sits  
11 down, never needing anything. She likes to do for herself.  
12 But now she can't really do too much of that, do too much of  
13 anything because she's always in pain. So she's just not  
14 herself, not who she used to be.

15 Q And other than her emotional changes, have you noticed  
16 anything different about her physically? Does she walk  
17 different now?

18 A Yeah. Sometimes when she's walking, her leg will give  
19 out. Like I notice it, and she does that a lot. Her leg  
20 always gives out, and it can be just walking to the kitchen.

21 Q Does she have trouble getting up and down steps?

22 A Yeah. She walks up the stairs like my daughter, my  
23 three-year-old, like step up, step up, step up, step up,  
24 right.

25 Q Did your mom have a problem walking up and down the steps

1 any before this injury?

2 A No; not at all.

3 Q Did you ever see your mom walk with a limp before this  
4 injury?

5 A Not at all.

6 Q Does your mom wear her brace every day?

7 A Yes.

8 Q Do you have to help her doing any of her personal care,  
9 anything in the shower? Do you help her with that?

10 A When she first had her surgeries, like every time, every  
11 time she had her surgery I would help her go to the restroom,  
12 get her ice packs and all that. I would help her get dressed,  
13 help her wash up and all that.

14 Q How is your mom doing? How do you think your mom is doing  
15 today?

16 A Today I would say better than she was a couple of months  
17 ago after her surgery. She's getting better, but she still  
18 has her days, her moments in time where she's just not looking  
19 too good, and I can tell that she needs to lay down and take a  
20 chill.

21 Q How has this injury -- how do you think this injury has  
22 affected her emotionally?

23 A Because she's just so used to doing everything for  
24 herself, and she's not a person to ask for anything. She's  
25 not a person to ask for anything and she just --

1 Q Now she has to ask for help?

2 A Yeah.

3 Q How has her injury affected you?

4 A We don't really get to do -- I don't mind doing anything  
5 to help my mom, but we don't really just get to have our  
6 quality time outside or do things that we used to do. Like  
7 now we do have a lot of similarities, and we love designing  
8 and making things. And as far as activities, as far as like  
9 dancing, we still love to watch little girls dance and cheer.

10 We don't really get to just go outside and do things.  
11 If we do go out, she gets tired like really easy because her  
12 knee is like always giving out, and she can go out for a  
13 little bit. But she can't really do that. We don't really  
14 shop anymore, and we don't really go out and get our nails and  
15 toes done, just different activities that we were able to do  
16 before this. She's not able to do this anymore.

17 Q Is most of the time you spend together now at home?

18 A Yes.

19 Q How is your mom's relationship with your daughter Carmen?

20 A Oh, it's great. It's amazing because she loves her  
21 grandma. She sleeps with her, and she sleeps wild. So I will  
22 have to let her fall asleep with my mom and then kind of go  
23 get her and bring her back to my room. But sometimes I would  
24 still wake up, and she's found her way back into her room.  
25 She just loves her grandma.

1 Q Is your mom able to play with Carmen? To pick her up? To  
2 hold her?

3 A She can hold her, but she can't let her crawl on her. She  
4 loves to crawl on my mom. Like that's her grandma. That's  
5 hers. So she can't really just do too much with her as far as  
6 letting her just crawl all types of ways.

7 Q And why is that?

8 A Because sometimes she would hit her knee, and she even  
9 knows that her knee is messed up now. So she'll kind of like  
10 move around to the other side and climb more over on her left  
11 side. So if she knows that my mom is not feeling good, she  
12 would go and say, Mama -- she calls her mama, and she calls me  
13 mommy. So she would go and she was like -- she'll say, Mommy,  
14 does Mama knee hurt? And I would say, yes. So she would go  
15 and she would kiss her knee and say -- just try to make her  
16 feel better. And she's only three, but she loves her grandma.

17 MS. HAGH: Thank you, Montesha.

18 THE WITNESS: You're welcome.

19 CROSS-EXAMINATION

20 BY MR. ROWLETT:

21 Q Ms. Corley, I'm Andy Rowlett. I represent Wal-Mart in  
22 this case. We haven't met before today, have we?

23 A No; not at all.

24 Q All right. And I don't represent your mom. I  
25 representing Wal-Mart, so I'm going to call you Ms. Corley.



1 Is that okay?

2 A Yes, sir.

3 Q All right. Now, Ms. Corley, you talked about some of the  
4 things you're doing to help your mom out. Is there any kind  
5 of division or responsibilities between you and anybody else  
6 who's helping her out, like certain things you do and other  
7 people might do to help her out?

8 A Yes; more as transportation. I pick up my brother.  
9 Sometimes I grocery shop for her. If anything -- if she needs  
10 anything, I'm mainly the driver, so I would go out and get  
11 certain things that she needs.

12 Q Okay. How about your grandmother?

13 A Yeah. She helps too. It's between me and my grandmother.

14 Q Okay. All right. And is there kind of a split between  
15 how you all help, who does what?

16 A Just whatever works with our schedules that day.

17 MR. ROWLETT: Your Honor, I need just a moment.

18 (Brief Pause.)

19 MR. ROWLETT: That's all I've got, your Honor.

20 THE COURT: All right. Okay. Thank you, ma'am. You  
21 can step down.

22 MR. MCELHANEY: Your Honor, that's the plaintiff's  
23 case in chief.

24 THE COURT: All right. We're going to take a  
25 15-minute break. I need to talk to the lawyers for a little

1 bit, and I'll call y'all back in here.

2 (Whereupon, the jurors exited the courtroom.)

3 THE COURT: All right. Did you have a motion you  
4 wanted to make?

5 MR. ROWLETT: I do.

6 THE COURT: Okay. Go ahead.

7 MR. ROWLETT: Do it now?

8 THE COURT: Yeah.

9 MR. ROWLETT: Your Honor, Wal-Mart moves for judgment  
10 at this time based on liability and the lack of proof of  
11 liability. As the Court knows from the proof entered so far,  
12 the initial investigation by the folks at the store led to  
13 them thinking that was probably a woman with a cup, who was  
14 shown on the video. But additional work on that -- and I can  
15 show the video if that would be helpful to the Court. But  
16 additional work in recent days has shown that that was a  
17 shopping list very likely.

18 And, also, additional work has indicated and evidence  
19 from this trial has indicated that Ms. Corley went down the  
20 aisle and was down there for a short period of time. Another  
21 woman went down there not that long after, and it's just not  
22 possible to tell with any kind of preponderance of the  
23 evidence, without speculating, the source of the water, how  
24 long it was there, where it came from, anything like that.  
25 Now --

1           THE COURT: Well, is it really speculation? We know  
2 it was there at least an hour beforehand because we all  
3 watched the video, and it never shows up. So it must have  
4 been there.

5           MR. ROWLETT: Your Honor, that's actually not the  
6 case because the video shows multiple people walking over and  
7 over and --

8           THE COURT: But you say -- I'm listening to your  
9 testimony when you go okay -- and these were your words  
10 somewhere -- we know the water is there now. And we all see  
11 them clean it up. So there is a point when there's water  
12 there; right? Everybody agrees on that.

13          MR. ROWLETT: Right. But you can never see it on the  
14 video.

15          THE COURT: But you're not denying it's there. You  
16 can't see it on the video, but nobody is denying there's not  
17 water on the floor.

18          MR. ROWLETT: That's right.

19          THE COURT: So then the question becomes when did it  
20 get there, and how long had it been there. But you never see  
21 anybody on the video cause the water to be on the floor.

22          MR. ROWLETT: Your Honor, I think the only thing that  
23 makes any sense is for the water to have come from off screen  
24 or --

25          THE COURT: But so what? Even if it did, so what?

1           MR. ROWLETT: Well, the so what is that it could have  
2 occurred after the woman with the ponytail went down that  
3 aisle and while --

4           THE COURT: That would be a stretch. I mean, could  
5 it have? It could have, but we all watched the video over and  
6 over again.

7           MR. ROWLETT: Your Honor, we're all in a position of  
8 speculating.

9           THE COURT: That's not speculating. I'm watching it.

10          MR. ROWLETT: Right. And --

11          THE COURT: I'm not going to argue with you because  
12 I'm going to deny your motion. But I'm trying to tell you  
13 here's what the jury is going to be thinking. There are all  
14 kinds of places in there where they can go this water was on  
15 the floor, you know, maybe it had been there longer than an  
16 hour. We don't know. How did it get there? Don't know. But  
17 it was there. And then they get to decide, based on watching  
18 the video and the testimony, how long it was there. They  
19 don't have to know how it got there, do they?

20          MR. ROWLETT: Your Honor, they're just going to have  
21 to speculate to conclude that it was there beyond a few  
22 seconds before, which is --

23          THE COURT: Why? They get to watch the video.  
24 That's not speculation. They can watch it and say I don't see  
25 it happen, so it's a reasonable conclusion to say that it must

1 have been there because we all watch it and don't see it hit  
2 the floor. The idea that the lady in green had anything to do  
3 with it seems pretty farfetched.

4 MR. ROWLETT: Well, your Honor, if the Court has made  
5 the Court's ruling, I won't address it further --

6 THE COURT: No, no. I'm just talking with you about  
7 it because I'm watching the same stuff. I don't know what  
8 they're going to do, but there's all kinds of evidence. I'm  
9 just wanting to talk to you about your case. It's an  
10 interesting way to try it. I don't know what else you're  
11 going to do, but it's a tough case.

12 MR. ROWLETT: Okay. Well, I hear you, but, your  
13 Honor, we're just convinced the water was not sitting there an  
14 hour. But be that as it may --

15 THE COURT: Well, I know you may be convinced of  
16 that, but you don't learn that -- you don't get there by  
17 watching the video.

18 MR. ROWLETT: Well, fortunately Mr. Hicks explained  
19 what you can see on the video and what you can't, and his  
20 experience watching people may --

21 THE COURT: I agree with you. I see them. They  
22 don't appear to be stepping over anything. Nobody appears to  
23 be seeing it. But it's there, and nobody denies that it was  
24 there.

25 MR. ROWLETT: Well, sure. We denied it was there

1 before -- at any point before she slipped that anybody can  
2 conclude without speculating. There's no evidence.

3 THE COURT: There's evidence that it was there.

4 MR. ROWLETT: At the time she slipped.

5 THE COURT: And there's -- and as you watch it, you  
6 see it didn't get there any other time. Now, you know, maybe  
7 if there had been another hour or two of the video, you might  
8 see how it got there. But it's clearly there when she slips,  
9 and you don't see it get there beforehand. I don't know. I  
10 don't know what they're going to do, but there's plenty of  
11 evidence that a jury could conclude it was there. There's  
12 also evidence to conclude it wasn't there and it magically  
13 appeared a second before she slipped on it. I don't know.  
14 We'll see. I mean, right? That's your theory. It magically  
15 appeared.

16 MR. ROWLETT: There is no magic about it. We can't,  
17 you know, I guess every time -- we've gotten kind of used to  
18 videos and being able to tell what happened and figure things  
19 out with all this technology and CSI and here's exactly what  
20 happened. We just can't see what happened at this location.

21 THE COURT: But is it your theory that it occurred a  
22 split second sometime before -- immediately before she  
23 slipped?

24 MR. ROWLETT: It may well have, and we don't know.  
25 We just don't know.

1 THE COURT: Okay.

2 MR. ROWLETT: And you've got to speculate to say  
3 other than that.

4 THE COURT: I don't know. Not much speculation but  
5 okay. All right. Unfortunately it's the jury that will make  
6 the decision. So it's fortunately for you. Okay. Well, then  
7 let's take a few minutes. Do you know -- you're set for the  
8 rest of the day?

9 MR. ROWLETT: I have Gavigan, and I think that will  
10 be it.

11 THE COURT: Okay. I'd like to get out -- well, we're  
12 going to need to get out a little early because it's CMA. I  
13 don't know if we can finish him before 5:00. We may have to  
14 come -- we're going to have to come back tomorrow anyway and  
15 have closing and all that, but CMA is going on. It's going to  
16 screw up everybody's parking for them because all of a sudden  
17 Central Park is going to jack up the rates after 5:00 o'clock,  
18 and everybody is going to want to get out of town. So, you  
19 know, it's 3:20. About 4:30, 4:45 we can -- I'm not saying  
20 rush through it. I'm saying if we get to 4:30, 4:45, let's  
21 just go ahead and stop and finish him the next day so  
22 everybody can get out of here.

23 All right. Let's take ten minutes.

24 COURTROOM DEPUTY: All rise, please.

25 MR. MCELHANEY: Your Honor?

1 THE COURT: Yeah.

2 MR. MCELHANEY: I'm sorry. Can we have permission  
3 for Ms. Corley to be excused for the rest of the afternoon?

4 THE COURT: Yeah. That's fine.

5 MR. MCELHANEY: Thank you.

6 THE COURT: Okay.

7 (Whereupon, the jurors exited the courtroom and there  
8 was a brief recess.)

9 COURTROOM DEPUTY: All rise, please.

10 THE COURT: Thanks. All right. You're ready?

11 MR. MCELHANEY: Yes, your Honor.

12 THE COURT: Okay. Let's bring the jury in.

13 (Whereupon, the jurors entered the courtroom.)

14 THE COURT: Thanks. Y'all can be seated.

15 Mr. Rowlett, you're ready?

16 MR. ROWLETT: Yes, your Honor. Defendant calls  
17 Dr. William Gavigan.

18 THE COURT: Doctor, if you'll come forward up here,  
19 Ms. Brewer is going to swear you in if you'll raise your right  
20 hand.

21 COURTROOM DEPUTY: Raise your right hand, please.

22 WILLIAM GAVIGAN, M.D.,

23 herein, having been first duly sworn, was examined  
24 and testified as follows:

25 COURTROOM DEPUTY: State your full name for the



1 record, please, and spell your last.

2 THE WITNESS: William Gavigan, G-a-v-i-g-a-n.

3 DIRECT EXAMINATION

4 BY MR. ROWLETT:

5 Q Would you state your full name again for the jury, please,  
6 sir.

7 A William M. Gavigan.

8 Q And, Mr. Gavigan or Dr. Gavigan, are you a medical doctor?

9 A I am.

10 Q How long have you been a medical doctor?

11 A 37 years.

12 Q Where are you licensed to practice medicine?

13 A In Tennessee.

14 Q How long have you been licensed in Tennessee to practice  
15 medicine?

16 A That long.

17 Q Continuously?

18 A Yes.

19 Q Where did you go to college?

20 A Notre Dame, University of Notre Dame.

21 Q And medical school?

22 A St. Louis University.

23 Q Where did you do your residency?

24 A At Mayo Clinic.

25 Q Are you board certified?

1 A I am.

2 Q By what entity or in what area?

3 A It's orthopedics. It's the --

4 THE COURT: You can lead him on this if you want.

5 MR. ROWLETT: Okay.

6 THE WITNESS: AAOS I think it is.

7 BY MR. ROWLETT:

8 Q Is that for orthopedic surgery?

9 A Yes.

10 Q And are you currently performing surgery these days?

11 A No, I'm not.

12 Q Okay. And for how long did you perform surgery as an  
13 orthopedic surgeon?

14 A 34 years.

15 Q Was that in Nashville?

16 A In Nashville.

17 Q All right. With what group at the end?

18 A At the end. Since about 1993, it was with TOA.

19 Q And what is TOA?

20 A Tennessee Orthopedic Associates.

21 Q All right. Now, when were you last treating patients as a  
22 medical doctor?

23 A In April of 2011.

24 Q And why are you not doing that anymore?

25 A Well, around that time I started slowing down. And I

1 decided I'd done it for 34 years, and it was time to stop.

2 Q As part of your work as an orthopedic surgeon, had you  
3 ever evaluated cases where patients of yours were injured?

4 A Yes.

5 Q Approximately how often over the years?

6 A It's what orthopedics do, I mean, many, many times.

7 Q Was it a weekly occurrence? Monthly?

8 A I think -- was your question injury?

9 Q Well, how often were you evaluating persons with injuries?

10 A Probably every day.

11 Q And then have you been involved in the legal system in  
12 terms of giving depositions or testimony for people who have  
13 been injured?

14 A I have.

15 Q And you did that while you were at TOA?

16 A Yes, I did.

17 Q So currently are you assessing claims made by persons who  
18 are injured or claiming injury?

19 A Yes, I am.

20 Q Now, are you doing that in cases like this one where  
21 somebody is injured say not at work?

22 A Yes.

23 Q Are you also doing it as part of workers' compensation  
24 matters?

25 A I am, yes.

1 Q So do you do work for defendants or plaintiffs or both?

2 A The majority is for defendants. Probably it's 80/20 now,  
3 80 percent defendants and 20 percent plaintiffs.

4 Q Have you ever been retained by Wal-Mart that you recall  
5 before this matter?

6 A I don't recall.

7 Q And my law firm is Howell & Fisher. Do you remember ever  
8 working with me or anybody over there?

9 A I do not remember.

10 Q When you were practicing as a treating physician, did you  
11 always know who the lawyers were who came in and did a  
12 deposition with you?

13 A I'm sorry. Say that again.

14 Q When you were practicing as a treating physician and one  
15 of your patients was injured, would sometimes their lawyer  
16 take your deposition?

17 A Yes.

18 Q Was that done regularly throughout your career?

19 A Yes.

20 Q Now, please describe for the jury what the focus of your  
21 practice was as an orthopedic surgeon.

22 A I was a general orthopedist. I would treat hands, knees,  
23 hips, do back surgery. I did the full gamut. As time went  
24 on, I stopped doing back surgery.

25 Q And have you reviewed medical records related to

1 Ms. Corley in this matter?

2 A I have.

3 Q Okay. Do you remember? Was it quite a few or --

4 A Yes; about like this.

5 Q Do you remember whether it was both before and after her  
6 accident at Wal-Mart?

7 A It was after her accident at Wal-Mart.

8 Q Okay. And what issue or issues were you assessing as part  
9 of your review?

10 A Causation.

11 Q Now, are you qualified to assess that issue?

12 A As an orthopedic surgeon, yes.

13 Q Have you seen patients with knee issues such as Ms. Corley  
14 had?

15 A Yes.

16 Q Was that common over your career or occasional?

17 A Very common.

18 Q Have you ever performed knee surgeries involving a scope?

19 A Yes.

20 Q Can you describe for the jury kind of how often or how  
21 much of that you did.

22 A Well, I knew you'd ask, so I tried to have a conservative  
23 number. It's at least a thousand if I did 30 a year.

24 Q Was it a regular part of your work?

25 A But it was a regular part of what I did.

1 Q How often were you in surgery over the years? Twice a  
2 week or --

3 A Two to three times a week.

4 Q And as part of that work, did you read x-rays of knees?

5 A Yes.

6 Q MRI's?

7 A Yes.

8 Q And have you treated patients with a torn meniscus?

9 A I have.

10 Q Have you ever treated patients who needed a total knee  
11 replacement?

12 A I have.

13 Q Have you ever treated patients with arthritis in their  
14 knees?

15 A Yes.

16 Q Please explain to the jury generally how medical records  
17 are maintained and why or generated, rather, at least in your  
18 experience.

19 A Well, the patient would come in. We would take a history,  
20 do an exam, do tests, render treatment, and that would all be  
21 documented in medical records.

22 Q And what's the point of documenting all that in a medical  
23 record?

24 A Well, it's important to know -- all of us want to know the  
25 history of what's happened to us, especially medical issues.

1 Q And when you had a patient come in, would you ever look at  
2 their records from before --

3 A Always.

4 Q -- they came to see you?

5 A Always.

6 Q Why?

7 A Because to know what's going on now with somebody you  
8 would have to know their past history. I would first take a  
9 history of what the present illness is, what happened, and  
10 then I would ask what happened before.

11 Q And in terms of assessing causation in this case with  
12 Ms. Corley, what role did medical records play in that  
13 assessment?

14 A A lot.

15 Q And did you actually examine Ms. Corley?

16 A No, I did not.

17 Q Was that necessary to your evaluation of causation?

18 A Not three years out. Maybe initially if I saw her, that  
19 would have been helpful for causation, but three years out it  
20 wouldn't be helpful for what happened.

21 Q Initially you mean right after the accident?

22 A Yes.

23 Q Okay. And you understand that -- did Ms. Corley have knee  
24 surgery?

25 A Yes.

1 Q Now, Doctor, today I'm just going to ask you about the  
2 first and second one. Okay?

3 A All right.

4 Q All right. Now, did you review records related to  
5 Dr. Dube's treatment of Ms. Corley?

6 A I did.

7 Q And did he document his care and treatment of Ms. Corley?

8 A Yes.

9 Q Based on your expertise and history as an orthopedic  
10 surgeon, were you qualified and able to assess it and  
11 understand it?

12 A Yes.

13 Q And given her presentation when she first came in to  
14 Dr. Dube, have you seen patients similar to Ms. Corley?

15 A Yes.

16 Q Many times?

17 A Many times.

18 Q All right. And, Doctor, did you prepare a report for us?

19 A I did.

20 Q Well, feel free to refer to that if you need to refresh  
21 your recollection. Do you remember every single detail in the  
22 stack of records that you reviewed?

23 A No. I tried to clean out salient parts to put in my  
24 report.

25 Q All right, Doctor. Well, referring to when Ms. Corley



1 first came in to see Dr. Dube, do you have a record of what  
2 kind of issues she was having at that time?

3 A Well, she had had a twist injury at Wal-Mart and had knee  
4 pain and came in, and he diagnosed a torn cartilage.

5 Q And then did he perform surgery on her?

6 A He did.

7 Q And at that time for that surgery, based on her  
8 presentation, is that the same thing you would have done at  
9 that time?

10 A Yes.

11 Q Why?

12 A She had a twist injury. She came in and had an MRI, and  
13 if I'm not mistaken, it showed a small degenerative and a  
14 small tear of the meniscus, medial meniscus. And therefore --

15 Q She couldn't quite hear you.

16 A Okay. Let me speak into the mike. I apologize. An MRI  
17 was done -- that's much better -- and it showed a tear of the  
18 medial meniscus.

19 Q All right. And then did Dr. Dube perform surgery? Did  
20 you read what he saw when he performed the surgery?

21 A I did.

22 Q All right. Compare what you can tell about somebody's  
23 knee with an MRI versus what you can tell once you're  
24 performing surgery on a knee.

25 A Well, you're looking directly at the knee through the

1 arthroscope, so it's like you're having your hands right on  
2 it. You're seeing it. So those are the real findings.

3 MR. ROWLETT: Your Honor, may I take the exhibits,  
4 please, sir?

5 THE COURT: Yeah.

6 BY MR. ROWLETT:

7 Q Dr. Gavigan, do you have a record in front of you of what  
8 Dr. Dube recorded as what he observed during that first  
9 surgery on Ms. Corley's knee?

10 A I do.

11 Q Would you please tell the jury what items he observed?

12 A I'm referring to my note here. His op note stated --  
13 postop diagnosis was right knee medial meniscal tear, right  
14 knee Grade II to III chondromalacia of a large area of the  
15 medial femoral condyle, loose bodies throughout the right knee  
16 with apparent donor site from the medial femoral condyle,  
17 extensive synovitis, Grade I and II chondromalacia of the  
18 patella. Now, I didn't answer your question. I wrote the --  
19 I gave the diagnosis, but he did have comments in the body of  
20 his report of what he saw.

21 Q Well, were those diagnoses done after the surgery?

22 A Yes.

23 Q Was that based on what Dr. Dube observed?

24 A Yes.

25 Q All right. So please tell the jury about the second

1 finding about Grade 2 to 3 chondromalacia. What is  
2 chondromalacia?

3 A Chondromalacia is arthritis Grade 1 to 4. Grade 4 would  
4 be bone on bone, and grade 2 to 3 is moderate to moderate  
5 severe. And it means the surface of the shiny cartilage is  
6 breaking down and thinning out.

7 MR. ROWLETT: Your Honor, may I pass Plaintiff's  
8 Exhibit 10 up to Dr. Gavigan?

9 THE COURT: Yeah.

10 BY MR. ROWLETT:

11 Q Dr. Gavigan, could you hold that up so the jury can see it  
12 and please explain to them where Dr. Dube recorded  
13 chondromalacia?

14 A The thigh bone on the inside, you call that the femur, and  
15 right on the weight bearing part of it that's what he stated  
16 as a large area of Grade II to III chondromalacia right here.  
17 He saw many -- just stop at that point.

18 Q Well, what else did he see there, Doctor?

19 A Throughout the knee he saw loose bodies floating around in  
20 the knee. Throughout the knee he saw synovitis, which means  
21 if you look in there, the tissue is kind of inflamed and  
22 reddened. And then up under the kneecap he saw lesser  
23 findings, but he saw Grade I to Grade II chondromalacia or  
24 thinning and break down of the cartilage under the kneecap.

25 Q Can you tell, based on your review of the records, how

1 long that medial meniscal tear had been there?

2 A No.

3 Q And do people sometimes have tears such as this one  
4 without feeling it or without having problems related to the  
5 tear?

6 A Yes.

7 Q And did the MRI before the accident make any indication or  
8 reference to degenerative changes?

9 A In the meniscus.

10 Q And what are degenerative changes? What does that mean?

11 A It means it's breaking down. The meniscus is gristle.  
12 It's fibrocartilage. It's usually very stout. It's a shock  
13 absorber, gives a little when you walk on it. And with  
14 degenerative changes it's having fissure lines breaking on the  
15 inside of it and then on the outside of it.

16 Q Why does this happen?

17 A It's degenerative wear and tear.

18 Q Does it happen as people age?

19 A It can happen as people age.

20 Q How long does it take chondromalacia to form?

21 A Years, at least several months. It's a slow ongoing  
22 process.

23 Q And so do you have a record then of approximately how long  
24 after the accident at Wal-Mart this first surgery took place?

25 A The accident was 9-18-14 -- I'm sorry. Wrong page. The

1 accident was November 7th, 2011, and the surgery was  
2 December 3rd, 2011.

3 Q Doctor, I'm going to ask you to state all your opinions,  
4 only if you have them, to a reasonable degree of medical  
5 certainty. Is that okay?

6 A Yes, sir.

7 Q Now, do you have an opinion about whether Ms. Corley had  
8 chondromalacia before the accident at Wal-Mart?

9 A I do have an opinion.

10 Q And what is that?

11 A That she did.

12 Q And why do you say that?

13 A Because there couldn't -- all of those findings that we  
14 just related to you couldn't have happened in a month. It  
15 would have taken, as I said a minute ago, at least several  
16 months. And with all that loose -- the loose bodies floating  
17 and the extensive surface of the medial femoral condyle, that  
18 probably would take years.

19 Q Dr. Gavigan, what is synovitis?

20 A Synovitis is inflammation.

21 Q Is it related to arthritis?

22 A Yes.

23 Q And can you reach an opinion or formulate an opinion about  
24 whether Ms. Corley had the meniscus tear before the accident  
25 at Wal-Mart?

1 A I initially said it was aging determinant. When I see the  
2 findings of the surgery with the extensive arthritis changes,  
3 I would say that more than likely it's pre-existing. It came  
4 with the arthritis. The arthritis is the main problem, and  
5 with that arthritis there's a little tear of the meniscus.

6 Q And did Dr. Dube document arthritis?

7 A He did.

8 Q Did Ms. Corley have a second knee surgery?

9 A She did.

10 Q And do you recall or does your report reflect why she had  
11 a second knee surgery?

12 A She was having pain.

13 Q So what is your assessment of the role of arthritis in the  
14 knee for the second surgery?

15 A She had an MR -- what led to the second surgery was this  
16 MRI on 7-23-2013. It showed a linear band of presignal in the  
17 posterolateral horn of the medial meniscus with a tiny component  
18 extending into the articular surface. To translate that, it  
19 means there might be a new small meniscus tear.

20 The actual report stated this may represent the  
21 sequelae of a tear or post surgical changes. So in our  
22 business we don't know if that's a new tear or it's just the  
23 changes that are resulting because there's been surgery. And  
24 we go in and we shave and burr the meniscus so it remains  
25 rough.

1 Q Doctor, how do you -- what's a weight bearing x-ray?

2 A Weight bearing x-ray is when you're standing, when the  
3 patient is standing.

4 Q What's the point of it?

5 A Well, to assess arthritis it's the definitive means to do  
6 so.

7 Q How does it do that?

8 A Because a regular x-ray, non weight bearing, the space, it  
9 could be open, and it doesn't represent the anatomic situation  
10 when you're walking around. So you get a weight bearing x-ray  
11 standing, and that let's you know what the dynamic status of  
12 the knee is. So if you have arthritis, very often they're  
13 different. The standing film will show you really how much  
14 arthritis there is. It usually is more -- if you have  
15 arthritis, it's more narrow than the non weight bearing film,  
16 and it will let you quantitate it all the way up to is it bone  
17 on bone.

18 Q And is a weight bearing x-ray used to assess whether a  
19 total knee replacement is appropriate?

20 MR. MCELHANEY: I'm sorry to interrupt, but I think  
21 discussion of weight bearing x-rays is outside the scope of  
22 the Rule 26 disclosure. We object to the topic.

23 THE COURT: Overruled.

24 BY MR. ROWLETT:

25 Q Dr. Dube -- pardon me. Dr. Gavigan, did you see any

1 records in -- do you need a hand there?

2 THE WITNESS: Yeah. Can you excuse me, your Honor?  
3 Can I get some water?

4 BY MR. ROWLETT:

5 Q Yeah, sure. It gets a little dry after working in this  
6 courtroom for a while.

7 A Yes.

8 Q After Ms. Corley returned after the first knee surgery  
9 continuing to have problems, would you have done a weight  
10 bearing x-ray?

11 A Yes. I would have been concerned that she's not getting  
12 better. I knew on the first surgery you had a lot of  
13 arthritis, and I would try to figure out why she's not getting  
14 better.

15 Q Would a weight bearing x-ray have helped you?

16 A Weight bearing x-ray would let us know.

17 Q Did you see any indication in Dr. Dube's records that you  
18 reviewed that he ever performed a weight bearing x-ray?

19 A I didn't see it.

20 Q And depending on the results of a weight bearing x-ray  
21 after the first surgery, depending on the findings, might it  
22 have been appropriate for Ms. Corley to have had a total knee  
23 replacement at that time?

24 A Depending on the findings, yes.

25 Q What findings would you look for or assess in determining



1 whether somebody would need a total knee replacement?

2 A Either a bone or bone narrowing or very significant  
3 narrowing to explain her pain.

4 Q What's your assessment of whether the second surgery was  
5 indicated?

6 A Well, my opinion was that it wasn't because we already  
7 knew how much arthritis she had, and even if there was a tiny  
8 little meniscal recurrent tear, it wouldn't have changed  
9 anything to take care of that.

10 Q What's your assessment of the role of arthritis and her  
11 problems around the time she had the second surgery? That is,  
12 did it play any causal role or not?

13 A Well, no. Even the op note -- go to the second op note of  
14 the second surgery -- stated the same findings, Grade II and  
15 Grade II chondromalacia. So to answer your question, the  
16 second surgery wouldn't have been --

17 Q What's the role of arthritis, if any, and the problems she  
18 was having right before the second knee surgery?

19 A Sorry. I got off the question. I think the -- that was  
20 her problem at the time of the second surgery. It was  
21 arthritis.

22 Q And what's your opinion about whether the accident at  
23 Wal-Mart caused her to have arthritis?

24 A It didn't. She already had it.

25 Q Have you watched the video?

1 A I have.

2 Q And did it show Ms. Corley appear to slip?

3 A Yes.

4 Q Could you see whether she twisted her leg or not?

5 A I made a note of it. Let's see what I -- I'll refer to  
6 that.

7 Q Your report on the last page.

8 A Yes. I have it. I commented that I did watch the video  
9 and -- I'm sorry. That's Dr. Dube's. Let me go -- I stated I  
10 did watch the video, and I stated that when she came out of  
11 the aisle and grabbed the cart, she twisted her right knee and  
12 paused, then continued walking but with a right-sided limp.

13 Q How did you describe the incident there in the next part  
14 of your assessment?

15 A I stated this was a very minor twist. She did not fall.  
16 She held onto the cart. She paused for a moment and then  
17 started walking around the store.

18 Q And what was your assessment of whether the twist was  
19 related to the underlying arthritis in her knee?

20 A I believed it was.

21 Q And then what was your assessment about whether Ms. Corley  
22 had a problem with her knee such that she was susceptible to  
23 having problems with it for any kind of minor twisting  
24 episode?

25 A I believe without much arthritis that was documented in

1 the surgery, that she would have those problems.

2 Q What was your assessment of whether, based on what  
3 Dr. Dube saw on the first surgery, Ms. Corley was likely to go  
4 the rest of her life without knee problems?

5 A She was not going to go for the rest of her life without  
6 knee problems. She had significant arthritis.

7 Q And have you seen other patients who've had problems with  
8 their knees after some kind of event?

9 A Yes.

10 Q And in terms of patients, is there any kind of similar  
11 incident that puts strain on a knee, such as going up and down  
12 the stairs, getting out of a chair?

13 A With that much arthritis, getting up from a sitting  
14 position, walking up and down the stairs, trying to squat,  
15 trying to kneel, planting the foot and pivoting, could all at  
16 times cause pain.

17 Q And maybe cause problems with the knee?

18 A Yes.

19 Q Does that much arthritis make somebody susceptible to  
20 problems?

21 A Yes.

22 MR. ROWLETT: All right. One moment, your Honor,  
23 please.

24 (Brief Pause.)

25 MR. ROWLETT: That's all I've got, your Honor.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. MCELHANEY:

4 Q Dr. Gavigan, do you have any exhibits up there with you?

5 A Is this an exhibit?

6 Q You can pass it to the marshal, please. Good afternoon,  
7 Doctor. We met a few weeks ago; right?

8 A Yes.

9 Q Came out to your office and asked you some questions about  
10 this case?

11 A Yes.

12 Q Have you had a chance to read the deposition transcript  
13 that was generated as a result of the questions and answers  
14 that you and I had that day?

15 A No.

16 Q Doctor, will you agree with me that for 30 years you've  
17 been a professional witness?

18 A Can I ask, does that mean doing depositions?

19 Q Well, do you remember when I asked you that question in  
20 your deposition the other day?

21 A No.

22 Q I asked you if you are a professional witness. You don't  
23 recall that?

24 A I think, yes, I recall that question.

25 Q Do you recall your answer to the question?

1 A I do not.

2 MR. MCELHANEY: Mr. Rice, can we see page 38, lines 8  
3 through 10. Can we get the lights for a second, sir?

4 And, Dr. Gavigan, I want to be fair with you, so if I  
5 can get the help of the marshal, I'll pass you a copy of the  
6 deposition transcript. Okay? That way if you want to look at  
7 something to make sure, when I ask you questions today, that  
8 it's in context, you can do that. Okay?

9 THE WITNESS: Fine.

10 BY MR. MCELHANEY:

11 Q Is that fair?

12 A That's fair.

13 Q Okay. So I'm showing you page 38, lines 9 through 10, on  
14 the screen. Can you see that?

15 A Yes.

16 Q When I asked you the question a couple of weeks ago,  
17 you're a professional witness, are you not, what was your  
18 answer?

19 A Yes.

20 Q That's true, isn't it?

21 A Well, if I may ask, two weeks ago there were a lot of  
22 things I didn't understand, and so I'm asking that question  
23 now. If being -- if doing depositions means I'm a  
24 professional witness, then that's -- then I am. But that's --  
25 but I haven't done anything else so I really don't, now that

1 I've seen it again, don't know what the definition of a  
2 professional witness is.

3 Q You've been a witness that's been hired -- you can take it  
4 down, Mr. Rice. You've been a witness that's been hired by  
5 insurance attorneys for 30 years, have you not?

6 A I have been hired by insurance companies for 30 years,  
7 yes.

8 Q To be a witness in cases like these; right?

9 A Again, I wish someone would help me. I have to say that I  
10 don't know these legal terms. What does professional witness  
11 mean? I've asked does that mean I've done depositions. I  
12 have. Have I done anything else? Not that I know of.

13 Q Do you remember when I asked you that question in your  
14 deposition?

15 A Well, I do, but I'm telling you now that I'm being asked  
16 it again, we had quite an exchange that day. I was answering  
17 these questions that I'd never been asked and I -- that was my  
18 answer. But now I'm saying --

19 Q I appreciate that. I'm asking you a different question.

20 A Sure.

21 Q Have you been a witness for defense attorneys for 30  
22 years?

23 A Again, I don't know what witness means. If it means that  
24 I've done depositions, yes.

25 Q Did you give me a different answer during your deposition?

1 A Yes.

2 Q Okay. In your deposition you agreed with me, did you not,  
3 that you had been a professional witness for defense attorneys  
4 for 30 years?

5 A Yes.

6 Q Well, this is a different question. That last question  
7 was just had you been a professional witness. Now we're  
8 telling who you were a witness for and for how long. You  
9 understand?

10 A Well, may I -- this is all new to me, but can I assume  
11 that what you mean by witness is I've done depositions?

12 Q That you've been hired to participate in cases.

13 A Yes. I understand that terminology.

14 Q For defense attorneys for 30 years?

15 A Yes.

16 Q Okay.

17 A Thank you.

18 Q And, in fact, 95 percent of the work you have done in  
19 litigation cases like this one has been for defense attorneys;  
20 true?

21 A Yes.

22 Q And that is what you are in this case, a professional  
23 witness for a defense attorney; correct?

24 A Yes.

25 MR. MCELHANEY: We can go with the lights if you

1 want.

2 Doctor, you are not a member of the American Medical  
3 Association, are you?

4 THE WITNESS: No.

5 BY MR. MCELHANEY:

6 Q You're a retired surgeon at this point; correct?

7 A Correct.

8 Q And you quit practicing medicine in April of 2011?

9 A Yes.

10 Q You quit taking care of patients in April of 2011?

11 A I did.

12 Q And at that point you opened an office on White Bridge  
13 Road where you help lawyers with cases?

14 A Yes.

15 Q And that's what you've been doing ever since?

16 A Yes.

17 Q Your office is not connected to a hospital, is it?

18 A No.

19 Q Okay. Now, since you opened your office and started doing  
20 this work for lawyers, 80 percent of that time has been for  
21 defense attorneys; right?

22 A Yes.

23 Q And over that period of time, since May of 2011, you've  
24 earned almost \$400,000 doing this work, haven't you?

25 A Yes.



1 Q Are you marketing yourself, Doctor, in this new role?

2 A No.

3 Q Are you advertising anywhere?

4 A No.

5 Q That's not right, is it, Doctor? That's not correct, is  
6 it?

7 A Can you ask that question again? My answer was I'm not  
8 advertising; I'm not marketing, no.

9 Q Marketing your services as an evaluator and record  
10 reviewer anywhere?

11 A No. You asked me that last time, a few weeks ago.

12 MR. MCELHANEY: All right. Can we get the lights,  
13 please, sir? Thank you.

14 Dr. Gavigan, what is this we have on the screen?

15 THE WITNESS: That's my website.

16 BY MR. MCELHANEY:

17 Q Okay. And that's advertising your services as performing  
18 independent medical examinations and case reviews, is it not?

19 A It is.

20 Q And you set this up yourself after you left the TOA  
21 practice, didn't you?

22 A Yes.

23 Q And you are the administrator of this website, are you  
24 not?

25 A Yes.

1 Q You're responsible for the content of this website?

2 A I am.

3 Q You last updated this website in May of this year, did you  
4 not?

5 A I don't know when I did.

6 Q What's -- Dr. Gavigan, what's this say right here? Please  
7 contact the office. That's advertising your services, is it  
8 not, Doctor?

9 A It is, yes.

10 Q So when you told us in your deposition and just now told  
11 the ladies of the jury that you're not advertising your  
12 services, that wasn't right, was it?

13 A Well, the reason I said that was I haven't looked at this  
14 in so long, and I forgot about it. My son set it up for me,  
15 who's an internet guy, and I haven't read it maybe in three  
16 years. And so I'm wrong. Based on that, I do have a  
17 marketing piece, but I hadn't thought about it as a marketing  
18 piece --

19 Q And when --

20 A -- so I was incorrect.

21 Q When the website data says it was updated in May --

22 A I don't know what that means. I haven't read it. I don't  
23 know what that means. I haven't looked at it.

24 Q Do you see right here where it says professional  
25 organization membership?

1 A Yes.

2 Q This is what you hold out to the public to be your  
3 credentials to do this work; right, Doctor?

4 A Yes.

5 Q And you see right here where it says you're a member of  
6 the American Medical Association? Do you see that?

7 A I haven't updated it. I just pulled out that a couple  
8 years ago.

9 Q That's not true, is it?

10 A It's not true.

11 Q Dr. Gavigan, before you ever wrote your report for the  
12 Wal-Mart defense team, you knew what Dr. Dube's opinions were,  
13 didn't you?

14 A Because I'd just read the report. I mean, I'd just read  
15 his records so after reading his records. Before I wrote my  
16 report I did know.

17 Q And his deposition?

18 A Yes; and his deposition.

19 Q So before you thought about what you wanted to say to the  
20 people at -- Wal-Mart did hire you; right?

21 A Yes.

22 Q Before you thought about what you wanted to say to  
23 Wal-Mart that would be your opinions in the case, they made  
24 sure you had to review Dr. Dube's records and his deposition;  
25 right?

1 A Yes.

2 Q So you first got involved in this case after Wal-Mart knew  
3 Dr. Dube's position; right?

4 A Yes.

5 Q And you know that Dr. Dube relates all of her problems to  
6 the slip and twist; right?

7 A Yes.

8 Q And you know he says that the arthritis developed as a  
9 result of the slip and twist; right?

10 A Yes.

11 Q And you know he says that those loose bodies broke off  
12 either during the slip and twist or as a result of it;  
13 correct?

14 A Yes.

15 Q And when you started to sit down and think of what  
16 Dr. Gavigan was going to bring to this case after being hired  
17 by Wal-Mart, you already knew all that; correct?

18 A Yes.

19 Q Instead of just sending you the raw records for you to  
20 review and reach an independent decision, Wal-Mart made sure  
21 you had Dr. Dube's deposition to read, didn't it?

22 A Yes.

23 Q And, in fact, the only reason that you're sitting here now  
24 giving testimony is because you disagree with Dr. Dube. Will  
25 you agree with that?

1 A Yes.

2 Q And you're sitting here today giving this testimony after  
3 disagreeing with Dr. Dube, and you're being paid \$5,000 for a  
4 half day to do it; right?

5 A Yes.

6 Q And, in fact, at the time we took your deposition,  
7 including the time to come here today, you're going to make  
8 over \$10,000 on this case, aren't you?

9 A I know you added all that up. I haven't done that.  
10 Whatever the numbers are, if that's what you had. I don't  
11 know.

12 Q We added it up during your deposition, did we not, sir?

13 A I'm sure we did.

14 MR. MCELHANEY: Can we get page 36, lines 20 and 21.

15 THE WITNESS: I have numbers here on my worksheet  
16 here. So, yes, I would agree. These numbers match what --

17 MR. MCELHANEY: Okay.

18 THE WITNESS: So I'll say yes.

19 BY MR. MCELHANEY:

20 Q At the time we took your deposition, we knew when you'd  
21 come to court that you were going to earn \$10,000 to be  
22 involved in this case?

23 A Yes.

24 Q What we didn't know at that time was whether you were  
25 going to be called upon to do any other work, like reviewing

1 and prep for coming to court; right?

2 A Yes.

3 Q Have you done some more work, some review and some prep  
4 and reviewing other records, since we left?

5 A Yes.

6 Q Okay. So how much other money are you charging now,  
7 Doctor, that's above \$10,000?

8 A I don't have it in front of me. I didn't bring that with  
9 me.

10 Q You charge \$500 an hour just to look at records; right?

11 A Yeah.

12 Q And Wal-Mart happily paid you that; right?

13 A Yes.

14 Q How many more hours do you have in the case, since I left  
15 your office, reviewing records, talking to Wal-Mart?

16 A Two, two and a half.

17 Q Okay. Two, two and half, so that's another \$1500?

18 A Yes.

19 Q So we're at 11, at least \$11,500, you've earned because  
20 you gave opinions that were different than Dr. Dube; right?

21 A Yes.

22 Q The most common cause of meniscus tears in knees is a  
23 twisting injury; right?

24 A Yes.

25 Q And you agree that Ms. Corley had a twisting injury?

1 A Yes.

2 Q You agree she walked into Wal-Mart fine, didn't she?

3 A Yes.

4 Q Normal gate; right?

5 A Yes.

6 Q And she walked out limping; correct?

7 A Correct.

8 Q You agree that the tear in her knee could have occurred

9 with the twist at the Wal-Mart store; right?

10 A Yes. I did say that, yes.

11 Q And that's your opinion to a reasonable degree of medical

12 certainty, isn't it?

13 A Yes.

14 Q But despite the fact that you agree that the twist at

15 Wal-Mart could have caused the meniscus tear, you've come up

16 with an idea that she had pre-existing arthritis; right?

17 A Correct.

18 Q And it's your opinion that this pre-existing arthritis set

19 her up to have a tear; right?

20 A Yes.

21 Q In all of the medical records -- and you showed the

22 jury -- would you say that many records you reviewed?

23 A Yes.

24 Q Am I accurate with this little spacing between my fingers?

25 A Maybe a little more.

1 Q Maybe a little more. Okay. In all the records that  
2 Wal-Mart gave you to review, Dr. Gavigan, no other doctor, no  
3 other doctor made a diagnosis of pre-existing arthritis, did  
4 they?

5 A No.

6 Q You agree that Dr. Dube is her treating orthopedic  
7 surgeon?

8 A I do.

9 Q He has a three-year history with her; right?

10 A Yes.

11 Q Certainly Dr. Dube never diagnosed pre-existing arthritis,  
12 did he?

13 A He did not.

14 Q You are the only doctor to have ever diagnosed  
15 pre-existing arthritis; correct?

16 A In this case.

17 Q Related to Ms. Corley?

18 A Yes.

19 Q Let me ask you a better question. Regarding Sabrina  
20 Corley and her right knee, you were the only doctor to have  
21 ever diagnosed pre-existing arthritis?

22 A Yes.

23 Q And you're the doctor hired by Wal-Mart?

24 A Yes.

25 Q Now, when we got into the nuts and bolts of what happened



1 at Wal-Mart that day during your deposition, you admitted to  
2 me that the twist in the water at Wal-Mart would have caused  
3 and did cause whatever arthritis was there in your opinion to  
4 be worsened; correct?

5 A Yes.

6 Q So even if your opinion that you came up with in June of  
7 this year were to be correct that she had arthritis, the slip  
8 and twist made all that worse, didn't it?

9 A Yes.

10 Q And that worsening of that arthritis that you say was  
11 there pre-existing, that's what led to the first surgery,  
12 isn't it?

13 A Yes.

14 Q So regardless of whether you disagree with Dr. Dube, that  
15 first surgery was caused by that event at Wal-Mart; right?

16 A Yes.

17 Q And that's your opinion to a reasonable degree of medical  
18 certainty?

19 A Yes.

20 Q And you say that the second surgery was also related to  
21 that arthritis; right?

22 A Yes.

23 Q The same arthritis that was made worse in the slip and  
24 twist; right?

25 A Yes.

1 Q Okay. So it all goes back to the slip and twist; correct?  
2 The need for the surgeries?

3 A The need for the second surgery was arthritis.

4 Q Which was made worse by the slip and twist; correct?

5 A Yes.

6 Q And so, also, I think you agree with me that the entire  
7 surgical process of the first surgery, when you cut out some  
8 of that meniscus, that's cutting out some of the shock  
9 absorber; correct?

10 A Yes.

11 Q And it's gone forever. It's not going to come back, is  
12 it?

13 A No.

14 Q And that affects the way the knee responds to weight  
15 bearing, doesn't it?

16 A It can.

17 Q And as you're up on your feet and you're moving around,  
18 what can happen is additional parts of that meniscus start to  
19 wear away or flake off and get some fraying and tearing;  
20 right?

21 A That may happen, yes.

22 Q And if that happens, you can go back in and clean that up  
23 arthroscopically, can't you?

24 A You can, yes.

25 Q And that's what Dr. Dube did in this case; correct?

1 A Yes.

2 Q Now, he is using his -- you're not here to question his  
3 medical judgment, are you?

4 A No. I might have a different opinion, but I'm not going  
5 to question it.

6 Q He's the man who's treating her in real time and real  
7 space; right?

8 A Yes.

9 Q And he's the one who's interacting with her in his office  
10 time and time and time again; correct?

11 A Yes.

12 Q And I think you agree with me that there's a lot more to  
13 the patient-doctor relationship than is ever contained in the  
14 medical record; right?

15 A Correct.

16 Q The medical record -- the words in the medical record that  
17 the doctor dictates after he leaves the office, doesn't fully  
18 contain the exchange between a doctor and his patient, does  
19 it?

20 A No.

21 Q And Dr. Dube, he had that exchange with Ms. Corley, didn't  
22 he?

23 A Yes.

24 Q Time and time again; right?

25 A Yes.

1 Q By consequence you've never had an exchange with her?

2 A I did not.

3 Q You didn't take a history from her?

4 A I did not.

5 Q You didn't examine her; correct?

6 A Correct.

7 Q Doctor, when physicians like yourself -- when physicians  
8 like yourself are faced with two options, one of which is more  
9 thorough and provides more information and one of which is  
10 less thorough and provides less information, which should the  
11 professional doctor choose?

12 A The more information.

13 Q Seeing Ms. Corley in this case would have provided you  
14 with more information; correct?

15 A Correct.

16 Q Taking a history from her would have provided you with  
17 more information; correct?

18 A If she would have given me a different history.

19 Q Or if you'd asked her different questions than had been  
20 contained in the record?

21 A Correct.

22 Q So you agree with me that if you had interviewed her and  
23 took a history, it would have given Dr. Gavigan more  
24 information?

25 A Yes.

1 Q Performing a physical examination yourself would have  
2 given you more information?

3 A Yes.

4 Q You didn't do any of that, did you?

5 A No.

6 Q Instead you chose the method that provided less  
7 information and was less thorough, didn't you?

8 A Yes.

9 Q That's because that's what Wal-Mart wanted you to do,  
10 isn't it?

11 A They asked me to do a medical records review, so I guess  
12 if I translate your question, that's what they wanted me to  
13 do, yes, a medical records review.

14 Q So Wal-Mart didn't want you to see her?

15 A I don't know what they wanted other than they asked me to  
16 do a medical record review.

17 Q And you never asked to see Ms. Corley, did you?

18 A I did not.

19 Q Now I want to ask you about x-rays. X-rays are a good  
20 tool to show the joint spacing; correct?

21 A Yes.

22 Q And when you look at an x-ray, if there's like -- of a  
23 knee or a back and you look at the film of an x-ray -- are you  
24 with me so far?

25 A Yes.

1 Q -- if there is wide space between bony items, that  
2 indicates the absence of arthritis; correct?

3 A Correct.

4 Q That's what's called the joint space?

5 A Yes.

6 Q And if you have a normal joint space, that indicates the  
7 absence of arthritis; correct?

8 A Yes.

9 Q Okay. And that would be the same with the clavicle area  
10 of the shoulder you could have as a joint, isn't it?

11 A Yes.

12 Q And you would be looking for joint space in that area of  
13 the body; right?

14 A Yes.

15 Q And in the vertebral bodies, the spine, you'd be looking  
16 for joint spacing there; correct?

17 A Right.

18 Q And in the hips; right? That's a joint, isn't it?

19 A Yes.

20 Q And in the knees; right?

21 A Yes.

22 Q And ankles?

23 A Yes.

24 Q So in all those areas if you have normal joint space,  
25 that's the absence of arthritis. You've agreed with me on

1 that; correct?

2 A Yes.

3 MR. MCELHANEY: Okay. Your Honor, I'd like to move  
4 in for identification purposes Exhibit No. 25. It's an x-ray  
5 report.

6 MR. ROWLETT: No objection.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's Exhibit 25 was marked for  
9 purposes of identification and admitted into evidence.)

10 BY MR. MCELHANEY:

11 Q Dr. Gavigan, I'm going to show you this Exhibit No. 25 to  
12 trial. Mr. Rice will pull it. Go to the top, Mr. Rice.

13 You see this is Premier Radiology in Hermitage?

14 A Yes.

15 Q Okay. And the date of the -- it's an x-ray report;  
16 correct?

17 A Yes.

18 Q Okay. Right knee x-ray?

19 A Yes.

20 Q On what date, sir?

21 A 11-8-2011.

22 Q How many days after Ms. Corley fell at Wal-Mart was this  
23 x-ray taken?

24 A Within a few days. You want me to --

25 Q Do you remember the date she fell -- well, not fell

1 but slipped and twisted.

2 A November 7.

3 Q How many days after was this taken?

4 A One day.

5 Q What's the finding on the joint space in the right knee  
6 the day after the injury, Doctor?

7 A Normal.

8 Q Normal means the absence of arthritis; correct?

9 A Yes.

10 MR. MCELHANEY: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. ROWLETT:

13 Q Do you have that x-ray in front of you, Doctor, the report  
14 you were just asked about?

15 A No.

16 MR. ROWLETT: Your Honor, may I have Exhibit 25  
17 passed to the witness, please?

18 THE COURT: Yeah.

19 BY MR. ROWLETT:

20 Q Would you please read that to yourself, Doctor, and tell  
21 us when you're done.

22 A I have.

23 Q Does that impact the opinions you've given so far in the  
24 case?

25 A No.



1 Q Why not?

2 A This is not a weight bearing film, and my opinion was  
3 based on the operative findings.

4 Q When you were practicing medicine as a treating physician,  
5 how often were you hired by lawyers representing injured  
6 patients of yours for deposition?

7 A On the defense side or the plaintiff's side or --

8 Q Well, did you ever have patients who were patients of  
9 yours who had injuries?

10 A Yes.

11 Q Need to hear you.

12 A I'm sorry. Yes.

13 Q Did any of your patients -- did any of the patients that  
14 you treated as their doctor ever have claims?

15 A I can't think of any right now.

16 Q Were all the depositions you gave as a result of being  
17 hired to evaluate a claim?

18 A Can you maybe explain that better? What does that mean,  
19 evaluate a claim? If it's already out there?

20 Q Well, Dr. Dube was the treating physician for Ms. Corley?

21 A Yes.

22 Q Have you ever been a treating physician like Dr. Dube was  
23 in this case?

24 A Yes.

25 Q Have you ever provided testimony in a case for a

1 patient --

2 A Of mine, yes.

3 Q Your patient.

4 A A lot, yes, all the time, yes.

5 Q Okay. And was that when those patients were injured and  
6 making a claim?

7 A Yes.

8 Q Would you consider them plaintiffs then under that  
9 scenario like Ms. Corley is in this case?

10 A There's a legalese, but ask me one more time.

11 Q Let me try to do it without using legal terms. Okay?

12 A Yeah.

13 Q So were any of the patients you treated as your own  
14 patient, did they ever have claims?

15 A It's way -- I must have. I'd say yes, but I can't prove  
16 it now that I'm in court here. But I would think I did.

17 Q Did you -- were you available and your colleagues at TOA  
18 to give depositions like Dr. Dube in this case?

19 A Yes.

20 Q Okay. And do you give opinions that are true and honest?

21 A Yes.

22 Q Are they based on how much you're paid?

23 A No.

24 Q Are you ever giving opinions to try to get more work from  
25 a particular entity? Are you telling it like you see it?

1 A I tell it like I see it, and sometimes I tell it like it's  
2 not wanted to be heard.

3 Q Do most physicians like doing evaluations like you do?

4 A No.

5 Q Are there -- do they have the right to refuse to do that?  
6 Can anybody make them do that?

7 A Nobody can make them do it unless it's their own patient.  
8 They have to testify for their own patient.

9 Q Did some of your colleagues refuse to do it unless it was  
10 for their own patient?

11 A I think so. Most doctors don't like to do that. I've  
12 done it a few years. I started off young doing it.

13 Q When you were asked to assess causation in this case, was  
14 it helpful to have Dr. Dube's deposition?

15 A Well, it's helpful to know whatever he might say about the  
16 case, the clinical findings, his thoughts of surgery. So,  
17 yes, I think it's always helpful to see the deposition of the  
18 doctor to know more about what he's thinking.

19 Q And if you had agreed with everything Dr. Dube had said,  
20 would you have told us?

21 A Yes.

22 Q Even if you thought that might not be considered good for  
23 Wal-Mart?

24 A Right.

25 Q Talked about the charges that you have charged in this

1 case. How did you come up with that rate of \$500 an hour?

2 A It's the rate that we used at TOA for the last many years.  
3 It's the standard rate that orthopedic surgeons charge.

4 Q And did you ever tell me or anybody with Wal-Mart that you  
5 needed to see Ms. Corley to assess causation fully?

6 A I didn't.

7 Q Why not?

8 A Because I think the causation is -- was dependent on the  
9 history given of the accident and what past history there was,  
10 and there wasn't any that we could find, and the initial  
11 findings, the initial exam, the initial MRI, the x-rays, and  
12 the initial surgery findings, the initial findings in the  
13 first few months.

14 Q Did that appear to be good documentation of Ms. Corley's  
15 situation after the accident?

16 A Yes.

17 MR. ROWLETT: That's all, your Honor.

18 THE COURT: All right. Thank you, sir. You can step  
19 down.

20 Mr. Rowlett, do you have any additional witnesses?

21 MR. ROWLETT: Your Honor, I need just a moment.

22 (Brief Pause.)

23 MR. ROWLETT: Your Honor, defense rests.

24 THE COURT: Okay. Any rebuttal?

25 MR. MCELHANEY: No, your Honor.

1           THE COURT: All right. Both the plaintiff and  
2 defendant have rested their cases. I'm going to cut y'all out  
3 of here early. The CMA's are going on. You're going to want  
4 to get out of town. But then I will see y'all back here for  
5 closing at -- I've got some things to do with the lawyers.  
6 Let's get started at 9:30. All right. See y'all in the  
7 morning. Thanks.

8           (Whereupon, the jurors exited the courtroom.)

9           THE COURT: Okay. Let's do this: I've got some  
10 tinkering to do with the jury instructions. Let's have a  
11 charge conference at 8:30 in the morning, and then that will  
12 give us time, an hour for you to see what the instructions  
13 are. They're substantially similar to what you've submitted.  
14 And then we'll go right into closing.

15          MR. ROWLETT: Five minutes on closing, your Honor?

16          THE COURT: An hour.

17          MR. ROWLETT: Each?

18          THE COURT: Uh-huh, yeah.

19          MR. MCELHANEY: Your Honor, will we be allowed to,  
20 now that they're in evidence, to play the clips of testimony?

21          THE COURT: Yeah. Anything that's in evidence you  
22 can use. Don't use the jury instructions. We're not going to  
23 put those on the evidence presenter or anything else, but you  
24 can talk about them.

25          MR. MCELHANEY: Can we put the words of the jury

1 instruction in a slide?

2 THE COURT: No.

3 MR. MCELHANEY: Okay.

4 THE COURT: You can talk about the jury instructions,  
5 but I don't want the words up there.

6 MR. MCELHANEY: Okay. And I'm sorry to keep your  
7 Honor.

8 THE COURT: That's all right.

9 MR. MCELHANEY: Do you know now whether we're going  
10 to have -- the verdict form will be the plaintiff's requested  
11 or defendant's so we can think about how the closing will  
12 look?

13 THE COURT: What I'm not going to do -- I can't  
14 remember which one was which, but I know you had broken them  
15 out. It will be is there liability, yes, no, how much. Yes,  
16 no, and then the question about allocation of fault. But it's  
17 not going to break them down, pain and suffering is this, all  
18 the different elements. You can talk about those, obviously,  
19 but they're not going to be asked to allocate for each one.  
20 They're going to give a lump sum if they have -- find damages  
21 for her.

22 MR. MCELHANEY: Just general damages verdict?

23 THE COURT: Yeah. And anything else y'all think of  
24 tonight, we can talk about it in the morning.

25 MS. HAGH: Thank you, your Honor.

1 THE COURT: All right. Thanks.

2 COURTROOM DEPUTY: All rise.

3 (Whereupon, the proceedings were adjourned at 4:42  
4 p.m.)

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## REPORTERS CERTIFICATE

I, Wynette C. Blathers, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on November 5, 2014, in the matter of SABRINA RECHELLE CORLEY V. WAL-MART, Case No. 3:12-CV-01250; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (Volume II of IV, Pages 1 through 151) is a true and accurate record of the proceedings.

This the 2nd day of January, 2015.

/s/ Wynette C. Blathers, RMR, CRR  
Official Court Reporter